

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





1806

ORIGINAL

UNITED STATES COURTS OF APPEAL  
FOR THE SECOND CIRCUIT  
NO. 74-1806

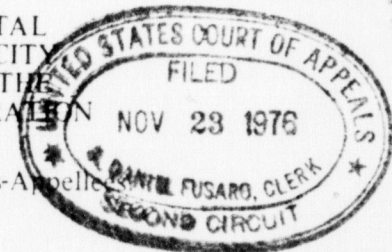
EXXON CORPORATION,

Plaintiff-Appellant,

-against-

THE CITY OF NEW YORK; ENVIRONMENTAL  
PROTECTION ADMINISTRATION OF THE CITY  
OF NEW YORK; and ADMINISTRATOR OF THE  
ENVIRONMENTAL PROTECTION ADMINISTRATION  
OF THE CITY OF NEW YORK.

Defendants-Appellees.



- GETTY OIL CO. (Eastern Operations), INC.,  
GULF OIL CO. - U.S.; MOBIL OIL CORPORATION;  
and SUN OIL COMPANY OF PENNSYLVANIA.

Plaintiffs-Appellants.

-against-

THE CITY OF NEW YORK; HERBERT ELISH,  
Environmental Protection Administrator  
of the City of New York; and the  
ENVIRONMENTAL PROTECTION ADMINISTRATION  
OF THE CITY OF NEW YORK.

Defendants-Appellees.

B P/S

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF\* OF APPELLANTS

[\* Pursuant to a Pending Motion Filed November 12, 1976, this Brief super-  
sedes the Briefs of Appellants filed August 14 and 19, 1974; Appellants  
Getty Oil et al.'s Reply Brief filed October 2, 1974; Appellants Getty Oil  
et al.'s Brief in Answer to Appellees' Supplemental Brief filed November  
26, 1974; and the Reply Brief of Appellant Exxon filed November 26, 1974.]

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
No. 74-1806

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EXXON CORPORATION,

Plaintiff-Appellant,

-against-

THE CITY OF NEW YORK; ENVIRONMENTAL  
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GETTY OIL CO. (Eastern Operations), INC.,  
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and SUN OIL COMPANY OF PENNSYLVANIA,

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THE CITY OF NEW YORK; HERBERT ELISH,  
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ENVIRONMENTAL PROTECTION ADMINISTRA-  
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Defendants-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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BRIEF OF APPELLANTS

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PRELIMINARY STATEMENT

Appellants Exxon Corporation (hereinafter "Exxon"),  
Getty Oil Co. (Eastern Operations), Inc., Gulf Oil Co. - U.S.,  
Mobil Oil Corporation, and Sun Oil Company of Pennsylvania



(hereinafter "the Getty plaintiffs" or together with Exxon "appellants"), seek reversal of the decision and Order of Hon. Charles E. Stewart, Jr., U.S.D.J., dated March 8, 1974, denying their motions for summary judgment. 372 F.Supp. 335 (S.D.N.Y. 1974). See Joint Appendix p. 125a. On April 15, 1974 Judge Stewart entered an Order certifying for appeal under 28 U.S.C. §1292(b) the questions raised in appellants' motions. This court accepted the appeal by Order dated May 28, 1974.

This "superseding" joint Brief for Appellants is submitted after a 24-month deferral of oral argument, pursuant to Order of this court, pending resolution of a related appeal in the District of Columbia Circuit. The present Brief consolidates, updates and replaces the Briefs of the Getty plaintiffs and Exxon filed August 14 and August 19, 1974 respectively; the Reply Briefs of the Getty plaintiffs and Exxon filed October 2 and November 26, 1974 respectively; and the Brief in answer to Appellees' Supplemental Brief filed by the Getty plaintiffs November 26, 1974.\*

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\*In addition to the regulations discussed herein, the Getty plaintiffs are appealing from the denial of summary judgment with respect to certain regulations respecting the volatility of gasoline, issues not raised by Exxon. The Getty plaintiffs are filing a Supplemental Brief with respect to these regulations.

## ISSUE PRESENTED FOR REVIEW

Has the promulgation of two comprehensive sets of regulations by the Federal Environmental Protection Agency preempted local regulation of the lead content of gasoline as provided in the express preemption provisions of the Clean Air Act Amendments of 1970?

## STATEMENT OF FACTS

The Clean Air Act Amendments of 1970, 42 U.S.C. § 1857f, authorized the administrator ("Administrator" or "Federal Administrator") of the Federal Environmental Protection Agency ("Federal E.P.A.") to prescribe regulations governing motor fuels and fuel additives. Once prescribed, such federal regulations bar States and localities from prescribing or attempting to enforce any local regulation of motor fuels or fuel additives not identical to the Administrator's.

On August 25, 1971 the Administrative Code of the City of New York was amended to provide, inter alia, controls over the lead content of gasoline "intended for use" in the City of New York. The relevant section of the Code required a "step-down" in lead content from 2.0 grams per gallon ("g/gal.") in 1971 to 0 g/gal. by January 1, 1974. Sections 1403.2-13.11(a)(3) and (4) of Chapter 57 of the Administrative Code of the City of New York.\*

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\* Attached hereto as Addendum G.



Appellants met the 1971 and 1972 lead levels required by § 1403.2-13.11 and are currently marketing gasoline in New York City with a lead content of not more than 1.0 g/gal.

On November 6, 1972, Exxon applied to the New York City Environmental Protection Administration ("City E.P.A.") for a variance from the provisions of §1403.2-13.11 which were to become effective January 1, 1973 and which would have required all grades of gasoline intended for use in New York City to have a lead content of no more than 0.5 g/gal. Exxon sought this variance on two grounds: first, the Federal E.P.A. was preparing to prescribe a regulation establishing a national control of lead as a fuel additive in gasoline and, second, the 0.5 g/gal. lead restriction would have imposed an unnecessary and costly hardship upon Exxon.

On January 10, 1973, the Federal Administrator prescribed comprehensive regulations governing motor fuel and fuel additives, and specifically the lead content of gasoline. These regulations, which became effective February 9, 1973, established a detailed program of control over lead in gasoline and required, inter alia, that at least one grade of "lead-free" gasoline (defined as gasoline with a lead content of not more than 0.05 g/gal.) be generally available throughout the United States after July 1, 1974.

40 C.F.R. § 80.22.

This initial set of federal regulations governing the use of lead as a fuel additive on a nationwide basis was designed to render lead reduction coincidental with the production of motor vehicles which could run efficiently on low-lead or lead-free fuels and were equipped with catalytic converter exhaust emission control devices.\* Vehicles equipped with such devices were not expected to be available until the 1975 model year and the federal regulations took that schedule into account. Preamble, 38 Fed. Reg. 1254 (Jan. 10, 1973)

The Emission Control Device lead regulations are still in effect. See 40 C.F.R. § 80.22. They were prescribed by the Federal Administrator by virtue of his authority under 42 U.S.C. § 1857f-6c which specifically preempts State or local regulation of fuels and fuel additives for which a control or prohibition has been prescribed by the Federal Administrator, unless the State

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\* These regulations are referred to in this brief as the "Emission Control Device" set of federal lead regulations and are attached hereto as Addendum A. They are designated "Controls applicable to gasoline retailers and wholesale purchaser-consumers" and are codified at 40 C.F.R. § 80.22.



or local control is identical to that prescribed by the Federal Administrator. 42 U.S.C. § 1857f-6c(c)(4).\*

Despite conclusive action by the Federal Administrator pursuant to his congressional mandate, New York City sought to enforce its own local control of gasoline lead content. On February 16, 1973, Exxon's application for variance from the provisions of § 1403.2-13.11(a)(3) of the Administrative Code was denied. Appellants were ordered to meet the 0.5 g/gal. lead content restriction on regular gasoline (i.e., gasoline with an octane rating below 95.9) by March 30, 1973 and to meet the 0.5 g/gal. restriction as to premium gasoline (i.e., gasoline with an octane rating of 95.9 and above) by June 28, 1973. Thereafter, under the terms of § 1403.2-13.11(a)(4), appellants were required to meet the 0 g/gal. restriction by January 1, 1974 for all grades of gasoline.

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\* "(4) (A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine -

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his findings in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator." 42 U.S.C. § 1857f-6c(c)(4).

Since the February 16, 1973 variance ruling, no changes have occurred in the provisions of the City's lead law, Title 57, § 1403.2-13.11 of the Administrative Code. However, additional federal regulations governing the use of lead as a motor fuel additive in all grades of gasoline are now in force.

On December 6, 1973 the Federal Administrator promulgated a second comprehensive set of regulations, which restricts the lead content of all grades of gasoline. 38 Fed. Reg. 33734. These federal regulations, which were stated by the Federal Administrator to be based on considerations of public health and welfare,\* became effective January 7, 1974 and provided for a comprehensive, scheduled reduction in the lead content of gasoline on a nationwide basis to a final level of 0.5 g/gal. after January 1, 1979. On December 20, 1974 the United States Court of Appeals for the District of Columbia Circuit set aside these Public Health regulations, (Ethyl Corp. v. Environmental Protection Agency, 7 ERC 1353 (1975)) and the E.P.A. suspended enforcement of them on February 20, 1975 (40 Fed. Reg. 7480).\*\* After a rehearing en banc, the District of Columbia

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\* These regulations are referred to in this brief as the "Public Health" set of federal lead regulations. They are designated "controls applicable to Gasoline Refiners" and are set forth in Addendum B. They are codified at 40 C.F.R. § 80.20.

\*\*Attached hereto as Addendum C.



Circuit, on March 19, 1976, upheld the regulations. 541 F.2d 1 (D.C. Cir. 1976) The reporting requirements under 40 C.F.R. §§ 80 et seq. were reinstated on April 1, 1976. 41 Fed. Reg. 13984.\* After the Supreme Court denied certiorari in Ethyl on June 14, 1976, (96 S.Ct. 2663), E.P.A. published a notice on July 9, 1976 terminating its suspension of enforcement and stating that it would resume enforcement of the lead in gasoline phasedown commencing on October 1, 1976. 41 Fed. Reg. 28352 (July 9, 1976).\*\* On September 28, 1976 the E.P.A. promulgated further regulations (41 Fed. Reg. 42675)\*\*\* which amended the Public Health regulations of 40 C.F.R. § 80.20 by revising the lead content stepdown schedule and providing for detailed reporting and federal monitoring of refinery preparations for production of low-lead gasoline. The Public Health regulations, 40 C.F.R. § 80.20 (as amended September 28, 1976), and the earlier Emission Control Device regulations, 40 C.F.R. § 80.22, constitute the two sets of federal lead restrictions currently in force which appellants allege preempt Section 1403.2-13.11 of the Administrative Code of the City of New York.

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\* Attached hereto as Addendum D.

\*\* Attached hereto as Addendum E.

\*\*\* Attached hereto as Addendum F.

In summary, the chronology of facts underlying this appeal is as follows:

December 21, 1970 Clean Air Act Amendments empower Federal Administrator to regulate and bar different local laws.

August 25, 1971 New York City adopts § 1403.2-13.11 governing the lead content of gasoline.

January 10, 1973 Federal Administrator prescribes comprehensive Emission Control Device gasoline lead content regulations. 40 C.F.R. § 80.22.

February 16, 1973 Exxon's application for a variance from New York City's lead law is denied.

March-May, 1973 appellants file suit, proceedings held before district court, and first appeal taken to this Court; case remanded.

December 6, 1973 Federal Administrator prescribes comprehensive Public Health gasoline lead content regulations. 40 C.F.R. § 80.20.

December 20, 1974 U.S. Court of Appeals for the District of Columbia Circuit sets aside Public Health gasoline lead content regulations.

February 20, 1975 E.P.A. suspends enforcement of Public Health gasoline lead content regulations, pending further court review.

March 19, 1976 District of Columbia Circuit, en banc, upholds validity of Public Health gasoline lead content regulations; cert. denied.

July 9, 1976, E.P.A. announces intention to enforce Public Health gasoline lead content regulations.

September 28, 1976 E.P.A. amends step-down dates of Public Health gasoline lead controls and provides for monitoring and reporting requirements.



PROCEEDINGS BELOW

Appellants' complaints herein were served on March 9, 1973 (Exxon) and March 14, 1973 (Getty plaintiffs). The actions are now consolidated. The complaints in both cases allege that appellees, in violation of both the Supremacy and Commerce Clauses of the United States Constitution, seek to enforce provisions of the Administrative Code of the City of New York requiring appellants to eliminate the lead content of gasoline sold in the City of New York. Count I of both complaints alleges a claim for declaratory and injunctive relief under the Supremacy Clause (Article VI, Clause 2) of the Constitution of the United States. Appellants allege therein that §§ 1403.2-13.11(a)(3) and (4) of Chapter 57 of the City's Administrative Code have been expressly preempted by federal statutory provisions governing the control or prohibition of fuels and fuel additives (42 U.S.C. § 1857f-6c) and specific federal regulations promulgated thereunder on January 10, 1973 to govern the use of lead as a fuel additive (40 C.F.R. §§ 80 et seq.). Appellants' complaints were amended in stipulations approved by the district court on January 9 and 11, 1974 to allege prescription of a second set of federal lead regulations on December 6, 1973, effective January 7, 1974. (38 Fed. Reg. 33733) Count II of both complaints states a claim for declaratory and injunctive relief under the Commerce Clause (Article I, Section 8, Clause 3) of the Constitution of the United States. Appellants

allege in this Count that §§ 1403.2-13.11(a)(3) and (4) discriminate against and impose impermissible burdens upon interstate commerce.

Appellants' amended complaints pray for a declaration that §§ 14.03.2-13.11 is void on preemption grounds, Commerce Clause grounds, or both, and an order preliminarily and permanently enjoining defendants from enforcing or taking any steps to enforce its provisions or imposing any fine, disability or penalty pursuant thereto.

On March 22, 1973 Judge Stewart denied appellants' motions for a preliminary injunction. Exxon v. City of New York, 356 F.Supp. 660 (S.D.N.Y.), remanded on other grounds, 480 F.2d 460 (2d Cir. 1973). Judge Stewart granted an application for an injunction pending appeal, however, and ordered, on March 26, 1973, that appellees be enjoined until April 15, 1973 or until argument of the appeal in this court, whichever was earlier, from enforcing or taking any steps to enforce § 1403.2-12.11(a)(3) (the 0.5 g/gal. lead restriction).

After argument, this court continued the injunction granted by Judge Stewart and returned the case to the district court for trial. 480 F.2d 460 (2d Cir. 1973). Under supervision of Judge Stewart, the parties attempted to negotiate toward a permanent resolution of the controversy. However, on December 6, 1973 a second set of preemptive federal lead regulations was issued. Thereafter,



appellants amended their complaints and moved for summary judgment on Count I (preemption). That motion was denied on March 8, 1974. 372 F.Supp. 335. On April 15, 1974 Judge Stewart entered an Order certifying the question to this court under 28 U.S.C. § 1292(b). The appeal was accepted by this court by Order dated May 28, 1974.

Briefs were filed by the parties as follows:

Appellants' briefs filed August 14 and 19, 1974

Appellees' brief filed September 18, 1974

Appellees' supplemental brief dated November 12, 1974

Appellants Getty Oil et al.'s answer to Appellees'

supplemental brief filed November 26, 1974

Appellant Exxon's reply brief filed November 26, 1974.

By Order of this court dated March 18, 1975, oral argument herein was postponed until final determination by the United States Court of Appeals for the District of Columbia Circuit of Ethyl Corporation v. Environmental Protection Agency, 541 F.2d 1 (D.C. Cir. 1976). With the denial of certiorari therein, 96 S.Ct. 2663 (1976), the Ethyl litigation has been concluded, and the time is now ripe for a hearing of the instant appeal.

The present brief is submitted pursuant to a pending motion filed with this court on November 12, 1976 seeking leave for all parties to re-brief the pending appeal and file superseding briefs.

## ARGUMENT

### SUMMARY JUDGMENT SHOULD BE ENTERED ON THE PREEMPTION COUNT

The unambiguous text of the statute involved in this case, its clear legislative history, and the constitutional doctrine of preemption as it has developed in the cases compels the conclusion that preemption of local controls of the lead content of gasoline has in fact occurred. The district court therefore erred in failing to grant summary judgment to appellants.

#### 1. The Clean Air Act Provides For Preemption When a Regulation Has Been Prescribed.

In the 1970 Amendments to the Clean Air Act, 42 U.S.C. § 1857f-6c, Congress added paragraph (c)(1), giving the Federal Administrator authority to regulate any fuel or fuel additive and establishing two alternative conditions under which he may issue such a regulation. 42 U.S.C. § 1857f-6(c)(1) provides in pertinent part:

"Control or prohibition of offending fuels  
and fuel additives

The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine."



The Federal Administrator may so regulate:

"(A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated." (emphasis added)\*

Congress further established the principle that if the Federal Administrator issues a control or prohibition, state or local regulations concerning the fuel or fuel additive so controlled or prohibited are preempted:

"(4) (A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine -

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his findings in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator." 42 U.S.C. § 1857f-6c(c)(4).

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\* The alternative conditions quoted above simply relate to the type of evidence which must be considered by the Federal Administrator before issuance of a control or prohibition of a fuel or fuel additive, and not to the preemptive effect of that control or prohibition, 42 U.S.C. § 1857f-6c(2)(A) and (B); see Conf. Rep. No. 91-1783, 91st Cong., 2d Sess. (1970), 1970 U.S. Code Cong. & Admin. News 5385.

2. The Federal E.P.A. Has  
Prescribed Controls  
Preempting Local Lead Laws.

In January, 1973 the Federal Administrator acted\* pursuant to the provisions set forth above and prescribed a regulation, effective February 9, 1973, which controls\*\* the use of lead as a fuel additive and provides for the general availability nationwide of at least one grade of lead-free (i.e., 0.05 g/gal. lead content) gasoline by July 1, 1974. 40 C.F.R. §80.22. See Joint Appendix p. 18a

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\* Thus the finding of no preemption in *Allway Taxi, Inc. v. City of New York*, 340 F. Supp. 1120 (S.D.N.Y.), aff'd, 468 F.2d 624 (2d Cir. 1972), which was decided in April 1972 before the Federal Administrator had prescribed any control of lead as a fuel additive, does not in any way contradict the proposition that federal preemption has now occurred.

\*\* The scope of the regulation clearly demonstrates that it is a "control or prohibition" applicable to a "fuel or fuel additive" and establishes a federal preemption under the statute.

"Sec. 80.1 Scope.

This part prescribes regulations for the control and/or prohibition of fuels and additives for use in motor vehicles and motor vehicle engines. These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulations promulgated; and certain other findings specified by the Act." (emphasis added) 40 C.F.R. § 80.1



et seq. These federal Emission Control Device regulations permit gradual transition to essentially unleaded gasoline as motor vehicles presently on the road are replaced over the years by vehicles designed to run efficiently on such fuels.

On December 6, 1973, the Federal Administrator prescribed a further control of lead additives in gasoline based upon a determination that lead particle emissions from motor vehicles present a significant risk of harm to the public health. 38 Fed. Reg. 33733. The Public Health regulations became effective on January 7, 1974 and provides for a comprehensive, scheduled reduction in the lead content of all grades of gasoline on a nationwide basis to a final level of 0.5 g/gal. after January 1, 1979\*. 40 C.F.R. § 80.20. On September 28, 1976 the E.P.A. amended 40 C.F.R. § 80.20 by revising the lead content step-down schedule and providing for detailed reports and federal monitoring of

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\* On December 20, 1974 the United States Court of Appeals for the District of Columbia Circuit set aside these Public Health regulations, and the E.P.A. suspended enforcement of them on February 20, 1975 (40 Fed. Reg. 7480). The District of Columbia Circuit, after a rehearing en banc on March 19, 1976, upheld the regulations. After the Supreme Court denied certiorari on June 14, 1976, E.P.A. published a notice on July 9, 1976 terminating its suspension of enforcement and stating that it would resume enforcement of the lead in gasoline phasedown scheduled on October 1, 1976. 41 Fed. Reg. 28352. See pages 7-8 hereof.

refinery preparations for production of low-lead gasoline. See Addendum F. The amended Public Health regulations, and the Emission Control Device regulation, 40 C.F.R. § 80.22, preempt Section 1403.2-13.11 of the Administrative Code of the City of New York.

3. The City's Lead Law Is Preempted Under The Decided Cases.

The specific Congressional mandate of federal preemption and the comprehensive nature of federal regulations governing the use of lead as a fuel additive have been ignored by the City of New York in attempting to enforce lead content restrictions which are not identical to those issued by the Federal Administrator. In fact, the City's precipitous lead restrictions directly clash with the carefully structured plan of the federal program and provide as follows:

§1403.2-13.11 Lead content of gasoline restricted.

(a) No person shall cause or permit the use, or, if intended for use in the city of New York, the purchase, sale, offer for sale, storage or transportation of gasoline which contains more than the following amount of lead by weight for the respective octane ranges as follows:

	95.9 Octane No.* & Above	Below 95.9 Octane No.*
(1) On and after November 1, 1971 .....	2.0 grams per gal.	1.5 grams per gal.

\* The term octane number shall mean research octane number or rating measured by the research method.



- |     |                       |            |            |
|-----|-----------------------|------------|------------|
| (2) | On and after          | 1.0 grams  | 1.0 grams  |
|     | January 1, 1972 ..... | per gal.   | per gal.   |
| (3) | On and after          | 0.5 grams  | 0.5 grams  |
|     | January 1, 1973 ..... | per gal.   | per gal.   |
| (4) | On and after          |            |            |
|     | January 1, 1974 ..... | zero grams | zero grams |

(b) Where the lead content of gasoline is restricted to zero grams per gallon as in subsection a, gasoline which contains 0.075 grams of lead per gallon shall be deemed to meet such restriction.

The federal controls governing the lead content of gasoline have a definite timetable for an orderly and gradual transition to the nation-wide availability of lead-free and low-lead gasoline. See Addenda A, B and F. The regulations of the City contradict that timetable and require precipitous reduction and elimination of lead additives. Both sets of regulations concern the same subject matter: the permissible lead content per gallon of gasoline. Both sets establish timetables and level requirements. Both apply in New York City.

The timetable of the Federal E.P.A., based on research of a staff which has worked on petroleum matters extensively in recent years and has researched and solicited comments on several proposed schedules, is quite different from the City's:

January 1, 1974 One grade of lead-free gasoline throughout the United States 40 C.F.R. § 80.22, Addendum A.

January 1, 1978 All grades of gasoline maximum lead content 0.8 g/gal. 40 C.F.R. § 80.20, Addenda B and F.

October 1, 1979 All grades of gasoline maximum lead content 0.5 g/gal. 40 C.F.R. § 80.20, Addenda B and F.

Not only are the schedules different, but the goals are in direct conflict for the City's schedule calls for lead-free gasoline (defined by it as 0.075 g/gal.) while the Federal schedule calls for an ultimate maximum of 0.5 g/gal. (low lead rather than lead free). In addition to the present and future lead content limits, the Federal regulations require refiners to file regular reports on progress made in readying plant facilities for production of reduced-lead gasoline on the federal schedule, while the City does not.

Thus the City's lead restrictions disrupt the federal program of national controls. Such an infringement of explicit federal preemption should not be countenanced, particularly where it "would only upset a carefully laid plan by Congress to deal with an important aspect of interstate commerce and public health." City of Chicago v. General Motors Corp., 332 F.Supp. 285, 290 (N.D. Ill. 1971), aff'd, 467 F.2d 1262 (7th Cir. 1972).

The courts have long recognized the power of Congress to regulate exclusively a particular field of activity and thereby displace coincident state and local regulation. Napier v. Atlantic Coast Line R.R., 272 U.S. 605 (1926) (railroad boiler safety laws). Such regulation takes precedence not only over inconsistent local rules, but also over local rules which might be viewed as supplementary. In



Missouri Pac. R.R. v. Porter, 273 U.S. 341 (1927) (railroad fire liability laws), the Court held:

"Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." 273 U.S. at 345-46.

Even though compliance with both the federal and the local laws may not be physically impossible, neither states nor localities can exert concomitant or supplementary regulatory authority over the same activity where Congress has expressly declared that the authority conferred by it shall be exclusive. Campbell v. Hussey, 368 U.S. 297, 302 (1961); Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 229-30 (1947). Thus federal law preempts state and local authority to regulate certain fields of activity on the basis of the Supremacy Clause of the United States Constitution, a fundamental mandate which forms an essential component of our federal structure. Northern States Power Co. v. Minnesota, 447 F.2d 1143, 1145 (8th Cir. 1971), aff'd, 405 U.S. 1035 (1972); cf. Fitzgerald v. Catherwood, 388 F.2d 400, 403 (2d Cir.), cert. denied, 391 U.S. 934 (1968). To ignore that component would lead to a chaotic

potpourri of rules promulgated by competing or conflicting forces within the nation with little or no recourse to national reconciliation.

4. The "Express Preemption"  
Section of the Clean Air Act  
Specifies the Congressional  
Intention to Preempt,  
Barring Enforcement of Local Laws.

A review of the decisions discussed above reveals that the controlling issue in such cases is whether Congress intended to displace state or local regulations. There is no need for this court to speculate about the question, however, because in the 1970 Amendments to the Clean Air Act Congress specifically provided that prescription of a control by the Federal Administrator bars local laws. 42 U.S.C. § 1857f-6c (c)(4).

The very existence of an express preemption clause in a federal statute is unusual. The fact that Congress focused specifically on the problem and spoke directly to it is an eloquent testimonial to the necessity of national uniformity of regulation. Chemical Specialties Mfrs. Ass'n. v. Clark, 482 F.2d 325, 328 (5th Cir. 1973); Chemical Specialties Mfrs. Ass'n v. Lowery, 452 F.2d 431, 437, 440 (2d Cir. 1971). Other recent cases have indicated that an express preemption pro-



vision removes the difficulty in establishing congressional intent to preempt. Indeed, we have located literally no case which involved a statute containing express preemption language where a court held that preemption of the subject regulations had not occurred after the contemplated federal administrative action.

An "express preemption" provision similar to the one now at bar\* is found in the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. § 1392(d)), prohibiting non-identical local regulations after promulgation of a federal administrative standard. In National Ass'n of Motor Bus Owners v. Brinegar, 483 F.2d 1294, 1308 (D.C. Cir. 1973), cert. denied, 415 U.S. 948 (1974), Judge Robinson, concurring in the decision and speaking on behalf of two of the three members of the panel, noted that this provision "flatly denies to the state authority to establish or continue in effect any motor vehicle or

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\* "Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard."

equipment safety standard not identical to the relevant federal standard."\* Judge Robinson went on to state: "Thus Congress preempted virtually the entire field of safety standards to the extent of any applicable federal standard." Id. Accord: Truck Safety Equipment Institute v. Kane (M.D.Pa., Civ. No. 75-636, Sept. 16, 1976, Slip. Op.).

A sister section of the Clean Air Act, nearly identical to the one now before this court, has been held to be preemptive. In Chicago v. General Motors Corp., 467 F.2d 1262 (7th Cir. 1972) the court said that the provisions of § 1857f-6a(a)\*\* "explicitly provided for preemption by the federal government of the entire field of standards for emissions from new motor vehicles." Id. at 1264. See Brown v. Environmental Protection Agency, 521 F.2d 827, 835 and n. 40 (9th Cir. 1975), appeal pending,

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\* Unlike the Clean Air Act Amendments, the National Traffic and Motor Vehicle Safety Act contains an exception to its preemption section (15 U.S.C. § 1392(d)) allowing more stringent state standards. Section 1857f-6c does not authorize this exception in the area of fuels and fuel additives. See also 42 U.S.C. § 1857d-1 allowing some latitude for more stringent state laws under certain provisions of the Clean Air Act but refusing to grant such freedom under § 1857f-6c. The only procedure available under the Act by which a state may utilize a standard different from that of the Federal E.P.A. would be the preparation and filing with the Federal E.P.A. of a State Implementation Plan containing the differing lead provision and obtaining approval of the Federal Administrator. 42 U.S.C. § 1857f-6c(c)(4)(c). New York has not done so.

\*\* "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this subchapter."



96 S.Ct. 2224 (1976)\*.

The Supreme Court recently reemphasized the unusual and overriding significance of language in a statute which "expressly excluded state regulation." DeCanas v. Bica, 424 U.S. 351, 359 n 7 (1976). The Court there allowed a state law to stand where such express language was absent. Id. The Court noted that an example of express preemption was § 10(a) of the National Labor Relations Act, 29 U.S.C. § 160(a) which "expressly excluded state regulation of the disputed conduct unless the Board entered into an agreement with the State ceding regulatory authority." 424 U.S. at 359 n.7. The Court reiterated its conclusion from San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) that "in that circumstance '[t]o leave the States free to regulate conduct so plainly within the central aim of the federal regulation involves too

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\* See also The Fouke Co. v. Mandel, 386 F. Supp. 1341 (D. Md. 1974) which, inter alia, dealt with the preemptive impact of the Marine Mammal Protection Act, 16 U.S.C. § 1361. The court there noted that the following language evinced a congressional intent to preempt state statutes concerned with the taking of marine mammals within a state's jurisdiction:

\*Except as otherwise provided in this section, no State may adopt any law or regulation relating to the taking of marine mammals within its jurisdiction or attempt to enforce any State law or regulation relating to such taking."  
16 U.S.C. § 1379(a)(1); 386 F. Supp. at 1359.

great a danger of conflict between power asserted by Congress and requirements imposed by state law'." 424 U.S. at 359 n.F. See also Guss v. Utah Labor Board, 353 U.S. 1 (1957).

Two other recent decisions illustrate the fact that a direct expression of the congressional intention to preempt eliminates doubt as to the effect of a statute. In National Association of Regulatory Utility Commissioners v. Coleman, 399 F.Supp. 1275 (M.D. Pa. 1975) the Court considered the Federal Railroad Safety Act, 45 U.S.C. § 421 et. seq., which provides in § 434 that in order to attain national uniformity states may regulate railroad safety "only until" the federal agency adopts a rule on the subject matter of the state regulation. Only local hazards are exempted. The court held that "the statutory language evidences a total preemptive intent".\* 399 F. Supp. at 1279. See also Azzaro v. Harnett, 414 F. Supp. 473 (S.D.N.Y. 1976) in which Judge Metzner held that the provisions of § 514 of

\* The court went on to note that in assessing the question of preemptive impact, the wisdom of federal preemption is not a valid consideration:

"The court notes that the wisdom of either Congress' decision to enact the Federal Railroad Safety Act empowering the FRA to preempt the states in the field of rail safety or the wisdom of the FRA's decision to promulgate federal accident reporting regulations which preempt state accident reporting requirements is not the issue...[T]his Court only has power to decide whether the FRA has authority under the Federal Railroad Safety Act to preempt railroad accident reporting requirements and the question of whether the FRA has exercised its authority wisely is beyond the permissible scope of review of the federal courts." (emphasis in original)

399 F. Supp. at 1281.



the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, 1144 ("this chapter shall supersede any and all State laws...") were intended as "absolute preemption of the field." Id. at 474.

There can be no doubt that Congress has entered the field of air pollution control pursuant to its Constitutional authority and has expressly preempted state and local regulation in certain areas. In delivering the Opinion of the Court in Washington v. General Motors Corp., 406 U.S. 109 (1972), Mr. Justice Douglas, certainly not a stranger to environmental concerns, discussed congressional action in the area of air pollution, pointing out that uniform solutions to all air pollution problems had not been found. However, he referred to the express statutory language by which certain realms of regulation have been preempted:

"To be sure, Congress has largely pre-empted the field with regard to 'emissions from new motor vehicles,' 42 U.S.C. §1857f-6a(a); 31 Fed. Reg. 5170 (1966); and motor vehicle fuels and fuel additives, 84 Stat. 1699, 42 U.S.C. §1857f-6c(c)(4)." 406 U.S. at 114. (emphasis added)

In discussing whether Congress intended the States or the Federal E.P.A. to have the dominant role under various provisions of the Clean Air Act, as amended, the Supreme Court has expressly recognized that the topic of fuel and fuel additive controls is one where Congress intended the

Agency's power to be paramount. Train v. Natural Resources Defense Council, Inc., 421 U.S. 60, 78-79 and n. 16 (1975).

The discussion of the text and legislative history of the amended Clean Air Act in Train was cited with approval for continuing validity in Union Electric Co. v. Environmental Protection Agency, 96 S.Ct. 2518, 2522 (June 25, 1976).

The Court in Union Electric, in the course of a discussion of the propriety of state laws stricter than federal regulations, relied upon and quoted from 42 U.S.C. § 1857d-1 which includes a reference to the provisions of "sections 209, 211(c)(4) [codified at § 1857f-6(c)(4)], and 233 (preempting certain state regulations of moving sources)" as topics on which such state regulation is improper. 96 S.Ct. at 2528 and n. 11.

The legislative history of the 1970 Amendments regarding the control or prohibition of fuels and fuel additives makes it abundantly clear that Congress intended to preempt the states and localities in fuel and fuel additive regulation, compelling an opinion of the preemption question different from that expressed by the court below.

The Clean Air Act Amendments of 1970 as passed in the House did not contain any provision preempting states and localities from regulating fuels or fuel additives. H.R. 17255, 91st Cong., 2d Sess. (1970) (reprinted at 116



Cong. Rec. 19224, 19227 (daily ed. June 10, 1970)). The Amendments as proposed in the Senate did, however, contain an explicit federal preemption of state or local fuel or fuel additive regulations. S. 4358, 91st Cong., 2d Sess. (1970) (reprinted at 116 Cong. Rec. 32371, 32379 (daily ed. Sept. 17, 1970)). The conference substitute, ultimately enacted into law as 42 U.S.C. §1857f-6c, rejected the House approach and contained an explicit preemption provision the effect of which was described as follows:

"No State may prescribe or enforce controls or prohibitions respecting any fuel or additive unless they are identical to those prescribed by the Federal Government or unless a State implementation plan under sec. 110 includes provision for fuel or additive control and such plan is approved by the Administrator as being necessary for achievement of national air quality standards." (emphasis added) Conf. Rep. No. 91-1783, 91st Cong., 2d Sess. (1970), 1970 U.S. Code Cong. & Admin. News 5385.\*

The purpose of this preemptive action by Congress was to enhance the entire program of motor vehicle emission control which is, and must continue to be, conducted on

\* The Senate version conditioned federal preemption upon the registration of fuels with federal authorities. The conference substitute removed that condition and broadened the scope of federal preemption to include fuel additives as well as fuels. The preemptive effect of the Senate version was, however, explicit.

"The Senate amendment amended the fuel registration provisions to expand the Administration's authority in this area . . . . Regulation of motor vehicle fuels by States and political subdivisions for purposes of emission control was preempted by the Senate amendment . . . ." (emphasis added) Conf. Rep. No. 91-1783, 91st Cong., 2d Sess. (1970), 1970 U.S. Code Cong. & Admin. News 5385.

a national basis. H.R. Rep. No. 91-1146, 91st Cong., 2d Sess. (1970), 1970 U.S. Code Cong. & Admin. News 5360-61. In adopting this specific preemption provision, Congress undoubtedly considered earlier evidence indicating the need for uniform federal standards so as to avoid chaos, unnecessary costs and benefits only to those in one section of the country at the expense of those residing elsewhere. H.R. Rep. No. 728, 90th Cong., 1st Sess. (1967), 1967 U.S. Code Cong. & Admin. News 1955-59. Moreover, prior Congressional enactments in the control of air pollution constitute a compelling background for the specific preemption language of 42 U.S.C. §1857f-6c(c)(4).\*

\* In 1955 Congress adopted the Air Pollution Control Act [Pub. L. 159, 84th Cong., 1st Sess. (July 14, 1955) 69 Stat. 322] which recognized the primary rights and responsibilities of the states and local governments in controlling air pollution. In 1963, the Clean Air Act [Pub. L. 88-206, 88th Cong., 1st Sess. (Dec. 17, 1963) 77 Stat. 392] replaced the 1955 Act and emphasized the need for a "national research and development program to achieve the prevention and control of air pollution." 42 U.S.C. §1857(b)(2). The 1963 Act directed the Secretary of Health, Education and Welfare to report to Congress on measures taken to improve fuels so as to reduce pollution caused by exhaust emissions. 42 U.S.C. §1857b-1.

In 1965 Congress amended the Clean Air Act to include a subchapter known as the Motor Vehicle Air Pollution Control Act [Pub. L. 89-272, 89th Cong., 1st Sess. Oct. 20, 1965) 79 Stat. 992] which directed the Secretary to prescribe standards for exhaust emissions from new motor vehicles.

Then in 1967 the Clean Air Act was amended by the Air Quality Act [Pub. L. 90-148, 90th Cong., 1st Sess. (Nov. 21, 1967) 81 Stat. 485] which explicitly provided for federal preemption of the entire field of standards for exhaust emissions from new motor vehicles. 42 U.S.C.



Congress reaffirmed its intention to preempt the regulation of motor vehicle fuels and fuel additives in the 1974 Amendments to the Clean Air Act. In adding a provision permitting State regulation of certain environmental matters, Congress expressly excepted from this authority the area of regulation concerning fuels and fuel additives previously preempted by 42 U.S.C. § 1857f-6c. See 42 U.S.C. § 1857d-1. Thus, if any underscoring of the Congressional intent were required, it has occurred.

5. All Requirements  
For Preemption  
Have Been Met.

Both appellees and the court below have mistakenly construed the clear Congressional mandate for preemption.

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\* (Contd.)

§1857f-6a(a). Moreover, the 1967 Air Quality Act called upon the Secretary to give special emphasis to research and development, "having industry-wide application," for the prevention of air pollution resulting from the combustion of fuels. 42 U.S.C. §1857b-1. Additionally, the 1967 Act provided for the registration with the Secretary of any fuel designated by regulation and the identification of fuel additives. 42 U.S.C. §1857-6c(a), (b). However, no specific federal preemption of fuel or fuel additive controls was incorporated in the 1967 Act.

In 1970 Congress adopted the Clean Air Act Amendments [Pub. L. 91-604, 91st Cong., 2d Sess. (Dec. 21, 1970) 84 Stat. 1690] which contained new and extensive authority for federal regulation of fuels and fuel additives by the Administrator of the Environmental Protection Agency. 42 U.S.C. §1857f-6c(c)(1). The specific federal preemption of state and local regulation in this area is unequivocal. 42 U.S.C. §1857f-6c(c)(4).

None of the various reconstructions suggested by appellees or the district court and discussed below, is compatible with the clear language of the Clean Air Act Amendments of 1970 and the legislative history described above in Point 4.

A. The "Requirement" of Two Regulations. Section 1857f-6c provides for preemption when the Federal Administrator has prescribed a control or prohibition. When the present case was first considered by the district court in 1973, appellees argued, and the district court held, that there were two separate types of preemptions, the first for regulations prescribed on the basis of the need to protect emission control devices and the second for regulations prescribed on the basis of the need to protect public health.\* While the argument is base-

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\* Draft Public Health federal lead regulations were proposed in early 1973, based on 42 U.S.C. § 1857f-6c(1)(A), but they had not been prescribed or published. Notice of Proposed Rule Making, 38 Fed. Reg. 1258-1261 (Jan. 10, 1973). On March 22, 1973, the court below based its rejection of federal preemption on the fact that this proposed regulation had not been published. 356 F. Supp. 660, 662-663 (S.D.N.Y. 1973).



less,\* the question is now moot because of the prescription by the Federal Administrator of a second set of lead restrictions, this time based on considerations of public health and welfare.

B. The "Requirement" of Enforcement. When the instant action was next considered by the district court in 1974 appellees urged, and the court below held in the decision now on appeal, that the Public Health federal lead regulations were not "effective" because a particular lead level effecting all grades of motor gasoline was not required to be met until months after the regulations were prescribed by the Administrator. 372 F. Supp. 335.

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\* The preemption provisions quoted above, (c)(4)(A)(i) and (ii), refer to a federal control or prohibition "under paragraph (1)" or "prescribed under paragraph (1)" of subpart (c). These provisions do not distinguish between federal controls or prohibitions for health and welfare and those for the protection of emission control devices. In its March 1973 opinion, the court below erroneously accepted defendants' argument that the allegedly different purposes of the federal and City lead restrictions precluded a finding of preemption. 356 F. Supp. at 662-63. The statute explicitly provides that if the Federal Administrator issues a regulation under paragraph (c)(1), then no state or political subdivision thereof may prescribe or attempt to enforce "any control or prohibition respecting use of [that] fuel or fuel additive in a motor vehicle or motor vehicle engine" (emphasis added). There is, thus, no ambiguity in the statute and no question of broadly or narrowly construing its terms: any federal regulation precludes the states from issuing "any control" (not, as the court below read it, a control for the same purpose as the federal regulation. Id. at 663.

Such reasoning is inconsistent with the district court's 1973 Opinion on the subject of the timing of federal preemption, totally without foundation in the controlling statutes, and at odds with the conclusion reached by the Federal Administrator who prescribed the regulations.

The district court originally held in its March 22, 1973 Opinion that the Federal Administrator had acted to regulate the lead content of gasoline for purposes of protecting emission control devices, despite the fact that appellants would not be required to meet the emission control device federal lead level until July 1, 1974. The district court then noted that until the Federal Administrator had acted to regulate the lead content of gasoline for health purposes, New York City was free to enforce its own regulations. 356 F. Supp. at 662-63. Now that the Federal Administrator has so acted, the district court has concluded in its March 8, 1974 Opinion that such action is not sufficient for federal preemption since the recent federal regulations will not be enforced until January 1, 1975.\* 372 F. Supp. 335.

There is no question that the December 6, 1973 Public Health regulations of 40 C.F.R. §80.22 were effective at the time they were properly prescribed, just as the September 28, 1976 amendments to the Public Health regulations of 40 C.F.R. §80.20 were effective at the time they were properly

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\* The first step-down required under the amended Public Health regulations now occurs January 1, 1978 when a reduction to .8 grams/gal. for all grades of gasoline is required. 41 Fed. Reg. 42675 (Sept. 28, 1976). See Addendum F.



prescribed. See Federal Register Act, 44 U.S.C. §1507 (1968). Nor is there any merit to the view that preemption does not occur until the date when the first step-down required by the regulations must be met. The 1970 Amendments to the Clean Air Act rigorously distinguish between the prescription of controls and the enforcement thereof. 42 U.S.C. § 1857f-6c(c)(4)(A) and (b) and (c). Preemption is triggered under the statute when the "Administrator has prescribed" the applicable control. An imminent compliance date is not required by the Act.\* There can be no doubt that publication in the Federal Register of final regulations is prescription of such controls. The compliance warning time provided in the regulations prior to the step-downs contained therein serves important purposes in permitting the gradual and costly technological conversion to low-lead processes. See 38 Fed. Reg. 33734, col. 2 (Dec. 6, 1973).

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\* Nor is there any argument that the "effective date" of the regulations affects their preemptive impact. The statute mandates preemption upon the prescription of a control. Moreover, the regulations are now in effect. See respondents' Answer herein, ¶5; 38 F.R. 33741. Respondents admitted (Memorandum in Opposition to Petitioner's Motion for a Preliminary Injunction, pp. 10-11) that the first set of federal lead regulations published January 10, 1973 in the Federal Register, were "effective February 9, 1973" despite the fact that the first step-down required thereunder was not to occur until July 1, 1974. See Answer ¶4.

In the prior appeal herein, Judge Mulligan, speaking for the court, wrote:

"The Administrator of the Federal Environmental Protection Agency has by regulation effective January 9, 1973, established a nation-wide control over lead in gasoline. . . ." Exxon Corporation v. City of New York, 480 F.2d 460, 462 (2d Cir. 1973).

Moreover, the federal monitoring required under the amended Public Health regulations, 40 C.F.R. § 80.20 (Sept. 28, 1976), makes it clear that there are current obligations affecting the conduct of appellant's gasoline refining operations arising out of the present regulations. Thus, there is a present enforcement impact in advance of the first date for achieving a specific lead level in all grades of motor gasoline nationwide. To suggest that the amended Public Health regulations are "not applicable" is simply erroneous.

The amendment of the Public Health regulations on September 28, 1976 (41 Fed. Reg. 42675) does not change the nature of the federal controls governing lead in gasoline. The amendments revise the schedule of step-downs contained in 40 C.F.R. § 80.20, but adhere to the principle of graduated reductions based on a nationwide assessment of refinery capability and petroleum supply considerations. Quarterly reports are required pursuant to the amended Public Health regulations (41 Fed. Reg. 42677) as they were under the terms of the original Public Health Regulations (38 Fed. Reg. 33741). The January 1, 1978 step-down to 0.8 g/gal. remains the same under the amended § 80.20 and the ultimate 1979 step-down is still set at 0.5 g/gal. (though the compliance date is changed from January 1 to October 1 of that year).



Appelants submit that it is clear as a matter of law that preemption has occurred. This court declined to pass on the federal preemption question when it rendered its previous decision herein on May 17, 1973. However, the Federal Administrator, the individual entrusted by Congress with responsibility for implementing all federal fuel and fuel additive restrictions, has concluded that the Public Health regulations, which became effective on January 7, 1974, have preempted local gasoline lead content restrictions and he specifically addressed himself to the New York City regulations at issue herein. See Joint Appendix p. 143a.\* Moreover, the Corporation Counsel of

\* The Supreme Court said quite plainly in *Udall v. Tallman*, 380 U.S. 1 (1965), that the views of the Administrator shall be accorded great weight:

When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration.

*Id.* at 16 (emphasis added). See also, e.g., *NLRB v. Natural Gas Utility District of Hawkins Co., Tenn.*, 402 U.S. 600, 605 (1971); *Zemel v. Rusk*, 381 U.S. 1, 11 (1965), *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 391 (1959); *NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264, 269 (1956); *Commissioner v. Estate of Sternberger*, 348 U.S. 187, 199 (1955). And unlike the situation of specific statutory standards for the labeling of aerosol containers described in footnote 9 of the Court's opinion in *Chemical Specialties Manufacturers Ass'n v. Lowery*, 452 F. 2d 431 (2d Cir. 1971), this case involves the preemptive effect of federal administrative regulations. Under the Clean Air Act, Congress has clearly delegated to the Administrator the power to provide for or negate preemption. See 42 U.S.C. §1857f-6(c)(4). No such delegation was involved in the *Chemical Specialties* case. Where Congress has given the Administrator substantial authority over the preemption question,

the District of Columbia has also arrived at the same conclusion reached by Federal Administrator. In a memorandum concerning the gasoline lead content restrictions, he concluded that such local restrictions were immediately preempted due to the adoption of the Public Health regulations. See Joint Appendix p. 144a.

C. The "Requirement" of Prior Emission Standards.

After almost two years of litigation concerning the preemptive effect of the various gasoline lead content regulations promulgated by the Federal Administrator, appellees argued for the first time in their supplemental brief, dated November 12, 1974, that all such federal regulations were "void ab initio" because the Administrator should have issued lead emission standards under 42 U.S.C. § 1857c-3(a)(1) before regulating the lead content of gasoline. This puzzling and tardily discovered theory is not warranted; careful review of every section of the Clean Air Act Amendments of 1970 and

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\* (Contd.)

certainly his views as to whether Congress intended preemption in the circumstances of this case are entitled to great weight.

It is clear, therefore, that Administrator Train's conclusion may properly be considered by this court in determining the preemptive effect of 42 U.S.C. §1857f-6c. Moreover, the Administrator's interpretation should be sustained if it is reasonable (although there may be other reasonable interpretations), even if it differs from the interpretation the Court might be inclined to reach. See Udall, supra, 380 U.S. at 16, K. Davis, Administrative Law §30.05.



every page of their legislative history fails to reveal the slightest basis for appellees' position. There is literally no hint of any requirement like the one proposed by appellees.

Appellees argue that a portion of one sentence of 42 U.S.C. § 1857f-6c ("including consideration of other technologically or economically feasible means of achieving emission standards under § 1857f-1") shows that the section "plainly contemplates that controls will be promulgated for a particular fuel additive only after emission standards have been established for that additive." The entire section is set forth in Addendum H. It is evident that neither the section as a whole nor the elliptical phrase quoted in isolation by appellees suggests such a requirement.

The section is designed to avoid action by the Federal Administrator without prior factual investigation. Thus, medical or scientific evidence must be taken into account. If emission standards for a fuel additive have been promulgated, alternate techniques for achieving such levels must also be considered. The section does not state or imply that prescription of emission standards is a prerequisite to valid administrative regulation of a fuel additive. Rather, §1857f-6c(c) states that the "Administrator may, from time to time on the basis of information obtained under subsection (b) of this section [reporting requirements]" issue regulations.

The Administrator's power to regulate is limited to two circumstances, neither of which relates to prior issuance of emission standards. He may issue regulations on the basis of "information available to him. . ." "(A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system..."\* The section does not require prior issuance of specific emission level standards.

Nor does any other section of the Clean Air Act, as amended, impose the requirement suggested by appellees. Moreover, § 1857f-1 deals only with emission standards for new motor vehicles. Section 1857f-6c is not so limited. Appellees' position, therefore, would mean that failure to prescribe lead emission standards for new cars would prevent valid prescription of regulations governing the content of gasoline used by the vast majority of cars on the road today.

Appellees make the astounding argument that "the legislative history of the statute fully supports" their new conclusion. The two pages from the Congressional Record

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\* The Administrator has made such findings and issued two sets of regulations based thereon. See pages 4 to 8 of this brief.



cited by appellees are annexed hereto as Addendum J for the convenience of the court. Neither they nor the remaining pages of debate reflect in any manner the thought that regulation of fuel additives under § 1857f-6c was contingent upon prior prescription of specific emission standards under § 1857f-1. See generally, 116 Cong. Rec. 19229-30 (June 10, 1970).\*

The relationship between fuel additive regulations under § 1857f-6c and the issuance of emission standards under § 1857f-1 was commented upon in Amoco Oil Co. v. Environmental Protection Agency, 501 F.2d 722 (D.C. Cir. 1974), where the court held that the uncontradicted statements of Senator Muskie in reporting to the Senate on the conference bill which became law are entitled to significant weight. Id. at 734. The court went on to point out that the prerequisite for valid regulation is a general finding of possible risk and that Senator Muskie clearly negated the theory that greater requirements were to be applied. Id. at 733-34. The court in Amoco quoted as dispositive of the issue the following passage from Senator Muskie's report

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\* The Conference Committee Report on the bill (HR 17255) which became the Clean Air Act Amendment of 1970 (PL 91-604) is similarly devoid of any suggestion that the regulation of a fuel additive can occur only after promulgation of emission standards for that specific additive. See Addendum K. Conf. Rep. 91-1783, December 17, 1970, 1970 U.S. Code Cong. & Admin. News 5385-86.

on the Conferee's intentions:

"While the conference substitute specifies procedures under section 211 which the Administrator will use in determining whether to prohibit or control fuels or fuel additives, the conference committee wishes to call the Administrator's attention to the relationship between his functions under this section and the emission deadlines stipulated in Section 202. It is not the intent of the Congress to create a cumbersome, time consuming administrative procedure which will delay necessary controls on fuels and fuel additives required to meet these deadlines.

Neither is it the intention of the Congress to lock the Administrator into a rigid economic interpretation of the cost benefit analysis specified in this section in making his determination to prohibit or control fuels or fuel additives.

Rather, the conference committee wishes to call the attention of the Administrator to the broad environmental, esthetic and health considerations underlying the enactment of this legislation which should be kept in mind in making these determinations."

Id., quoting from 116 Cong. Rec. (Part 32) 42386 (Dec. 18, 1970). It is clear from the quoted language that prior issuance of an emission standard was not intended by Congress to be among the Administrator's considerations, much less a prerequisite to valid fuel content controls.

Nothing in this court's decision in Natural Resources Defense Council, Inc., et al v. Train, No. 76-6075, (Slip Op. 485-502, Nov. 10, 1976) provides the slightest support for appellees' argument that the federal lead regulations are void. There this court held that the Federal



Administrator was required to place lead on E.P.A.'s published list of pollutants. The issue of preemption was not raised or decided. No requirement of prior issuance of such standards was mentioned in the thorough review of this topic by the court.

Finally, it should be noted that in the 300 pages of appellate decisions and dissents in the Ethyl litigation discussed earlier in this brief at 12, no suggestion was made that the federal regulation of lead was dependent upon prior issuance of lead emission standards. Indeed the central issue of that case was the nature of any prerequisites to issuance of the lead regulations and the validity of the regulations was upheld. See Ethyl Corp. v. Environmental Protection Agency, 541 F.2d 1 (D.C. Cir. 1976).

6. Preemption Will Effectuate  
The Congressional Mandate  
For a Uniform Nationwide  
Program of Lead Restrictions.

There are compelling reasons why the Federal Administrator has not placed immediate overall prohibitions on lead additives to gasoline. If New York City's lead restrictions were to be enforced, additional non-lead octane

components would be required in the production of gasoline for New York City. Joint Appendix 54a. This is due to the octane requirements of most motor vehicles presently in use. Id. Since the octane components supply is limited and cannot readily be increased, fewer octane components will be available for the production of gasoline sold in areas other than New York City. Id. The result is that more lead must be added to gasoline produced for areas other than New York City in order to maintain the octane levels necessary for today's automobiles. See Joint Appendix 54a. Thus appellees are attempting to secure for the City of New York what they view as a benefit, i.e., lead-free gasoline, while attempting to deprive the rest of the nation of that same benefit. In so doing, appellees have failed to prevent their activities from damaging their neighbors.

In addition, the interdependent relationship of the use of lead-free gasoline and the production of motor vehicles, equipped with catalytic converter exhaust emission devices and designed to run on such gasoline, is of paramount importance in the federal regulatory scheme. Preamble, 38 Fed. Reg. 1254-56, 1258-60 (Jan. 10, 1973). Compliance with New York City's lead content restrictions would adversely affect the performance of today's vehicles which are not



designed to run on lead-free fuel. Joint Appendix 45a. This in turn would cause an increase in non-lead exhaust emissions and slow the rate of local and national air quality improvement. Id.\* Moreover, the cost of producing gasoline for the New York City consumer would also increase due to the disproportionate concentration of production facilities required to supply low-lead and lead-free gasoline to one section of the country. Joint Appendix 54a. Finally, more energy would be required to produce gasoline for New York City, thus reducing energy available for the rest of the country. See Joint Appendix p. 41a et seq.

Thus, immediate removal of all lead from all grades of gasoline has been rejected by the Federal Administrator after weighing the evidence submitted to him. 38 Fed. Reg. 1254 (Jan. 10, 1973). See National Environmental Research Center, Effects of Reduced Use Of Lead In Gasoline On Vehicle Emissions And Photochemical Reactivity (1972).

Should the State or the City of New York desire to avoid the preemptive effect of the Emission Control Device and amended Public Health gasoline lead content regulations, the Clean Air Act provides an appropriate statutory mechanism

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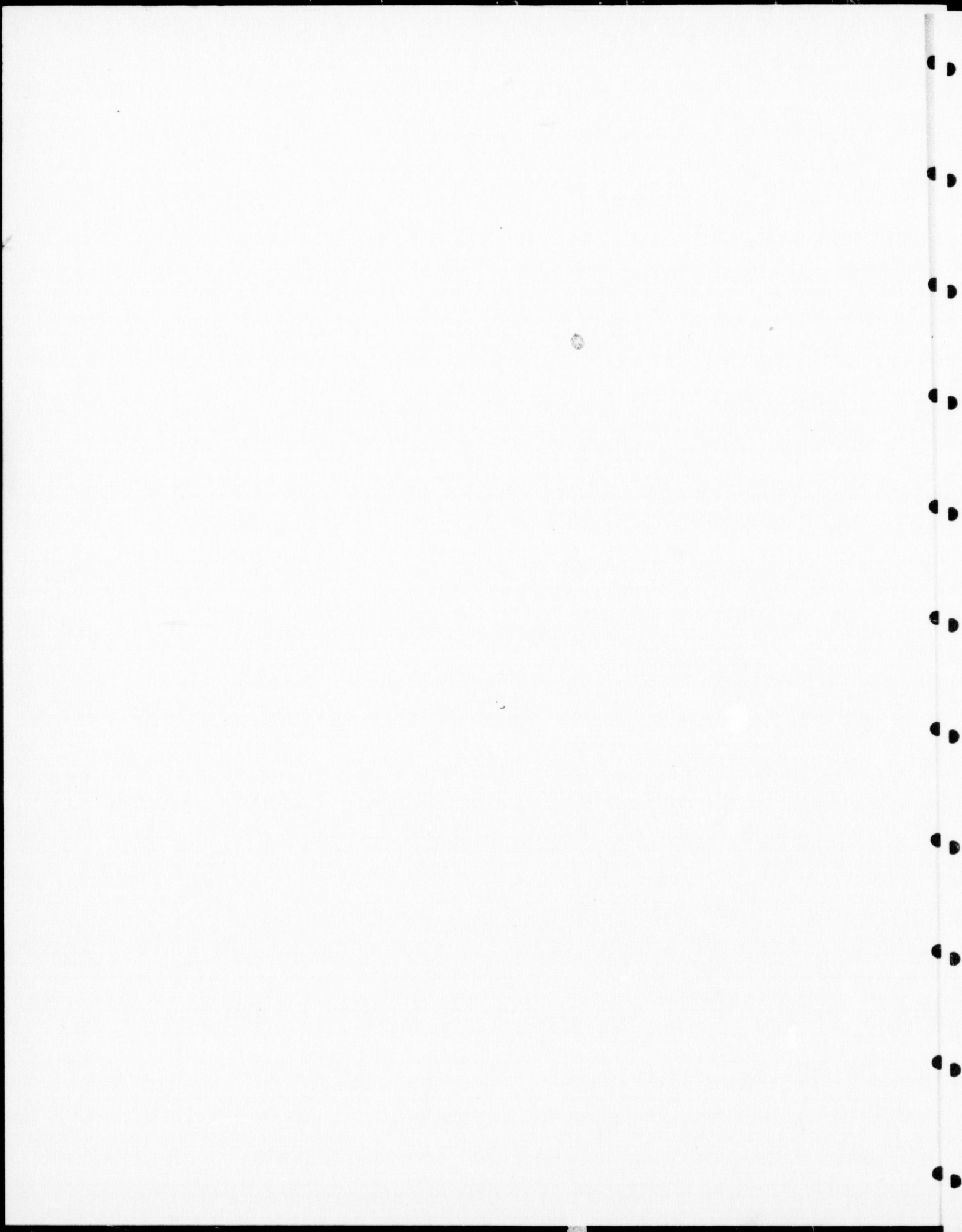
\* The district court's speculation that a finding of preemption would cause "degradation" of air quality (372 F. Supp. 335, 339 [S.D.N.Y. 1974]) is therefore unwarranted. In any event, the Federal Administrator is the party charged by Congress with responsibility for determining such possible effects.

by way of submission and approval of a state implementation plan with a gasoline lead content restriction at variance with the federal regulations. 42 U.S.C. § 1857f-6c(c)(4)(C). To date, however, there has been no submission by the State of New York or approval by the Federal E.P.A. of a state Air Quality Implementation Plan with gasoline lead content restrictions for the Metropolitan New York area. Submission and approval of such provisions by the Federal E.P.A. would be necessary to permit the State or the City of New York to regulate with more stringent requirements the use of lead as a gasoline additive. 42 U.S.C. § 1857f-6c(c)(4)(C).

#### CONCLUSION

The general availability of at least one grade of lead-free gasoline and a carefully phased reduction in the lead content of all other grades of gasoline in all areas of the country are the avowed purposes of the current federal regulations. Preamble, 38 Fed. Reg. 1254 (Jan. 10, 1973). The offending section of New York City's Administrative Code frustrates that purpose and retards the national fight against air pollution. This myopic attempt by the City of New York to regulate lead emissions by drastically and immediately reducing the lead content of gasoline is precisely the type of local interference with





national air pollution programs which Congress sought to avoid by preempting the field of fuel and fuel additive regulation. The court below erred in failing to give effect to the explicit congressional mandate.

The Supremacy Clause of the United States Constitution thus operates in this instance to invalidate § 1403.2-13.11 of Chapter 57 of the Administrative Code of the City of New York. The decision of the court below should be reversed by this court and the entry of summary judgment for appellants directed.

Respectfully submitted,

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## Title 40—PROTECTION OF ENVIRONMENT

### Chapter I—Environmental Protection Agency

#### SUBCHAPTER C—AIR PROGRAMS

#### PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

On February 23, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 3882), setting forth proposed regulations promulgating Federal standards for the use of lead and phosphorus additives in gasoline. Pursuant to the above notice, several public hearings were held. In addition, numerous written comments were received during an extended public comment period. After consideration of the hearings' testimony and other comments, and after further consideration of the available information on health effects of airborne lead and the adverse effect of leaded gasoline on emission control devices, the regulations have been divided into two separate pieces of regulatory action: proposed regulations based upon the health effects of airborne lead, which provide for the reduction of lead in all grades of leaded gasoline, and final regulations, which provide for the general availability of lead-free gasoline. The regulations on reduction of lead for health reasons are being repropounded because the Agency's basis for the reduction has been substantially revised. The proposed regulations are published in this issue of the FEDERAL REGISTER, accompanied by an explanation of the basis for the reproposal. The regulations providing for the availability of lead-free and phosphorus-free fuel, modified as determined to be appropriate by the Agency, are promulgated below. The basis for this promulgation is explained below.

When the proposed regulations were published, the Administrator had determined that emission products of lead and phosphorus additives would impair to a significant degree the performance of emission control systems which include catalytic converters that motor vehicle manufacturers are developing to meet the 1975-76 motor vehicle emission standards and that are likely to be in general use if lead and phosphorus additives are controlled or prohibited for use in certain motor vehicle gasolines. This determination was based upon consideration of the available scientific and economic data including a cost-benefit analysis comparing motor vehicle emission control devices or systems which are or will be in general use and require control or prohibition of lead additives in gasolines with emission control devices or systems which are or will be in general use and do not require such control or prohibition of those additives. After identifying the emission control systems or devices under consideration by automobile manufacturers for

meeting the 1975-76 standards, the Administrator determined that one system, the catalytic converter, would be in general use in the 1975 model year. Accordingly, a comparison of systems or devices was not feasible. Since publication of the proposed rule making, additional information on this subject has been submitted to the Agency during public hearings on the suspension of 1975 model year light duty motor vehicle emission standards, and the lead regulations hearings and comment period. This information provides further support for the Administrator's determination.

Therefore, the proposed provision for the general availability by July 1, 1974, of essentially lead-free and phosphorus-free gasolines of an octane quality suitable for 1975 and subsequent model year light duty vehicles is included in the final regulations. Copies of the cost-benefit analysis referred to above, entitled Aerospace Report, PB-205-981, are available for \$4.50 each from National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151.

At the time of the proposed rule making, the Administrator concluded that the proposed control of the use of lead additives and phosphorus-containing additives in lead-free gasoline would not cause the use of any other fuel or fuel additive that will produce emissions which will endanger the public health or welfare to the same or greater degree. Since that time, additional information has been developed which further supports the Administrator's earlier conclusion. This additional information and the basis for the original finding are set forth in a paper entitled "Effects of Reduced Use of Lead in Gasoline on Vehicle Emissions and Photochemical Reactivity" (with addendum). Copies of this paper are available from the Publications Section, Environmental Protection Agency, 401 M Street SW., Room 238W, Washington, DC 20460.

In the preamble to the proposed regulations, the Administrator invited comments concerning the effect of various levels of sulfur concentrations in lead-free and phosphorus-free gasoline on catalytic emission control systems, the impact of a sulfur limitation on the petroleum industry, and the impact of a sulfur limitation on motor vehicle performance and the cost of gasoline to the consumer. In light of these comments, the Administrator has determined that the currently available information is not adequate to clearly determine the impact of gasoline sulfur levels on emission control devices. Accordingly, additional information on both the effects of sulfur on catalyst deterioration and the impact of a sulfur regulation on the oil industry is required before regulatory action can be proposed.

The regulations as proposed provided that the lead content of unleaded gasoline not exceed 0.05 gram of lead per gallon. This maximum trace lead level is based upon the determination that it

would provide adequate protection for catalyst emission control devices and that delivery of unleaded gasoline meeting this specification is within the capability of the petroleum industry.

Most of the auto manufacturers initially asserted that the standard should be set at a maximum of 0.03 gram per gallon or less to prevent impairment of the effectiveness of the catalytic emission control devices. More recently, several manufacturers have stated that the proposed trace lead standard of 0.05 gram per gallon would be acceptable if such a standard assured that the average lead content of unleaded gasoline were 0.03 gram per gallon.

Spokesmen for the petroleum industry urged that the trace lead standard be set at 0.07 gram per gallon, the specification for unleaded gasoline established by the American Society for Testing and Materials. This specification was chosen on the basis of: (a) The capacity of the distribution system to deliver gasoline with low trace lead levels and (b) the reproducibility of the test methods. The experience of the petroleum industry as a whole in delivery of unleaded gasoline was conceded to be limited. The one company with substantial experience in the distribution of unleaded product is currently able to meet a 0.05 standard most of the time.

The regulations provide for the general availability of a lead-free and phosphorus-free gasoline with specified trace lead levels of 0.05 gram of lead per gallon. It is the Administrator's determination that without regulatory action requiring retail outlets to market at least one grade of such gasoline, availability of that product to the general public in all areas of the country would be uncertain, and may not be sufficient to assure the protection of catalytic control devices. This regulation will determine the range of trace lead in gasoline which will be available to the consuming public for use in motor vehicles with control devices (e.g., from 0 gram lead to 0.05 gram lead). Based on the available data on marketing of unleaded gasolines, the Agency projects that a 0.05 gram of lead per gallon maximum will result in a 0.03 gram per gallon average lead content. Since the Agency's motor vehicle certification regulations require that gasoline generally available at retail outlets be used in vehicle certification tests, 1975 model year vehicle certification testing will be required to be conducted using gasolines having a minimum lead content of 0.03 gram per gallon.

EPA has received numerous comments from the automobile industry requesting that the trace phosphorus level in the lead-free and phosphorus-free gasoline be lowered from the proposed level of 0.01 gram of phosphorus per gallon to 0.005 gram of phosphorus per gallon and below. After evaluating the catalyst deterioration data submitted in support of these requests, the Administrator has determined that the trace phosphorus level must be lowered to 0.005 gram of phosphorus per gallon in order to prevent



catalyst deterioration which would preclude compliance with the emission standards for the useful life of 1975 and later model year vehicles. Though some members of the oil industry contend that a lower phosphorus level would remove some of the existing flexibility in the use of phosphorus detergent additives, the Agency has determined that the need for any such flexibility is outweighed by the need to prevent catalyst deterioration. Moreover, nonphosphorus additives are fast becoming the predominant detergents in unleaded gasoline and are already in large scale use.

Representatives of the petroleum industry have sought clarification of the term "owner or operator" of a retail outlet used in paragraphs (c), (d), and (g) of § 80.22 of the regulations as proposed. These paragraphs have been modified to adopt the terms of the definition of "owner or operator" contained in section 111(a)(5) of title I of the Clean Air Act which defines an "owner or operator" as any person who "owns, leases, operates, controls, or supervises" a regulated facility.

The final regulations do not include the proposed prohibition of the dyeing of unleaded gasolines or the proposed requirement that leaded gasolines be conspicuously colored. Based on comments received on the control of transport of unleaded gasoline, the Agency has determined that a color-coding system is not necessary to the implementation of this regulation.

The Agency agrees with comments received that engine octane demand decreases with increase in altitude, and has added to the requirement that retail outlets market unleaded gasoline of at least 91 octane a provision allowing reduction in octane number in high altitude areas.

The proposed regulations set forth labeling requirements for retail outlets and motor vehicles and dimensions specifications for pump nozzles and automobile fuel filler inlets to prevent accidental use of leaded gasoline in vehicles equipped with emission control devices requiring the use of unleaded fuel. The regulations include slight changes in the required fuel filter inlet and pump nozzle dimensions proposed, in accordance with the recommendations of the Society of Automotive Engineers.

The country's independent gasoline marketers have expressed concern that the major refiners, who currently provide their supply of leaded gasoline, will not produce enough unleaded gasoline during the transition period following the regulation's effective date to supply both the majors' branded outlets and the independent outlets. Based on the results of the Agency's evaluation of the independent marketers' supply problems, the Administrator has determined that it would be premature to conclude that gasoline refiners will be unable or unwilling to provide adequate supplies of unleaded gasoline to retail outlets required by these regulations to offer it. If the shortage of unleaded gasoline

feared by the independent marketers materializes, this Agency will consider whether additional measures are necessary to assure the general availability of unleaded gasoline.

Comments were received which objected to the imposition of liability upon major brand refiners for sales at their retail outlets of unleaded gasoline containing lead in violation of the standard. The regulation retains this provision, with slight wording changes, based upon the Agency's determination that the contamination of unleaded gasoline associated with transportation of the product can best be prevented by the major refiners who have control or the ability to control their distribution networks. However, in order to clearly indicate that there is a positive duty on the major brand refiner to prevent any violation of the unleaded gasoline standard at his retail outlets, the Agency is proposing in this issue of the FEDERAL REGISTER a regulation specifically imposing this duty.

The regulations promulgated below shall be effective on February 9, 1973.

Dated: January 4, 1973.

WILLIAM D. RUCKELSHAUS,  
Administrator,  
Environmental Protection Agency.

A new Part 80 is added to Chapter I, Title 40 of the Code of Federal Regulations, as follows:

Subpart A—General Provisions

Sec.	
80.1	Scope.
80.2	Definitions.
80.3	Test methods.
80.4	Right of entry; tests and inspections.
80.5	Penalties.

Subpart B—Controls and Prohibitions

80.20	[Reserved]
80.21	Controls applicable to gasoline distributors.
80.22	Controls applicable to gasoline retailers.
80.23	Liability for violations.
80.24	Controls applicable to motor vehicle manufacturers.

AUTHORITY: Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857f-6c).

Subpart A—General Provisions

§ 80.1 Scope.

This part prescribes regulations for the control and/or prohibition of fuels and additives for use in motor vehicles and motor vehicle engines. These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulations promulgated; and certain other findings specified by the Act.

§ 80.2 Definitions.

As used in this part:

(a) "Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Gasoline" means any fuel sold in any State<sup>1</sup> for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(d) "Research octane number" means a measurement of a gasoline's knock characteristics which is determined by American Society for Testing and Materials analytical method designated D-2699.

(e) "Lead additive" means any substance containing lead or lead compounds.

(f) "Leaded gasoline" means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

(g) "Unleaded gasoline" means gasoline containing not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon.

(h) "Refinery" means a plant at which gasoline is produced.

(i) "Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

(j) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the public.

(k) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

(l) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery and any retail outlet.

§ 80.3 Test methods.

The lead and phosphorus content of gasoline shall be determined in accordance with test methods to be prescribed by the Administrator.

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative upon presentation of appropriate credentials shall have a right to enter upon or through any retail outlet or the premises or property of any distributor and shall have the right to make inspections, take samples, and conduct tests to determine compliance with this part and the Act.

§ 80.5 Penalties.

Any person who violates these regulations shall forfeit and pay to the United States a civil penalty of \$10,000 for each and every day of the continuance of

<sup>1</sup> "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or any district in which he does business. The Administrator may, upon application by the person against whom any such penalty has been assessed, remit or mitigate any such forfeiture. The Administrator shall have authority to determine the facts upon all such applications.

#### Subpart B—Controls and Prohibitions

##### § 80.20 [Reserved]

##### § 80.21 Controls applicable to gasoline distributors.

After July 1, 1974, no distributor shall sell to any distributor or retailer any gasoline which he represents is unleaded gasoline unless such gasoline does, in fact, meet the defined requirements for unleaded gasoline in § 80.2(g).

##### § 80.22 Controls applicable to gasoline retailers.

(a) After July 1, 1974, no retailer or his employee or agent shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only," or which is equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline.

(b) After July 1, 1974, every person who owns, leases, operates, controls, or supervises a retail outlet at which 200,000 or more gallons of gasoline was sold during any calendar year beginning with the year 1971 shall offer for sale at least one grade of unleaded gasoline of not less than 91 Research Octane Number at such retail outlet: *Provided, however,* That the octane number of unleaded gasoline offered for sale in areas where altitude is greater than 2,000 feet may be reduced one (1) octane number for each succeeding 1,000 feet but not more than three (3) octane numbers in total.

(c) After July 1, 1974, every person who owns, leases, operates, controls, or supervises six or more retail outlets shall offer for sale at least one grade of unleaded gasoline of not less than 91 Research Octane Number at no fewer than 60 percent of such outlets; *Provided, however,* That the octane number of unleaded gasoline offered for sale in areas where altitude is greater than 2,000 feet may be reduced one (1) octane number for each succeeding 1,000 feet but not more than three (3) octane numbers in total.

(d) After July 1, 1974, every retailer shall prominently and conspicuously display in the immediate area of each gasoline pump stand the following notice:

Federal law prohibits the introduction of any gasoline containing lead or phosphorus into any motor vehicle labeled "UNLEADED GASOLINE ONLY."

Such notice shall be no smaller than 36-point bold type and shall be located so as to be readily visible to the retailer's employees and customers.

(e) After July 1, 1974, every retailer shall affix to each gasoline pump stand a permanent legible label as follows:

(1) For gasoline pump stands containing pumps for introduction of unleaded gasoline into motor vehicles, the label shall state:

Unleaded gasoline.

(2) For gasoline pump stands containing pumps for introduction of leaded gasoline into motor vehicles, the label shall state:

Contains lead antiknock compounds.

Any label required under this paragraph shall be located so as to be readily visible to the retailer's employees and customers.

(f) After July 1, 1974, every retailer shall equip all gasoline pumps as follows:

(1) Each pump from which leaded gasoline is sold shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.362 centimeters).

(2) Each pump from which unleaded gasoline is sold shall be equipped with a nozzle spout which meets the following specifications:

(i) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters);

(ii) The terminal end shall have a straight section of at least 2.5 inches (6.34 centimeters) in length;

(iii) The retaining spring shall terminate 3.0 inches (7.6 centimeters) from the terminal end.

(g) If more than one grade of gasoline is dispensed from a gasoline pump or pump stand, the Administrator may grant an exception to paragraph (e) or (f) of this section where it has been demonstrated to his satisfaction that an alternate system of labeling or equipment will comply with the objectives of paragraph (e) or (f) of this section.

##### § 80.23 Liability for violations.

Liability for violations of paragraph (a) of § 80.22 shall be determined as follows:

(a) (1) Where the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries appears on the pump stand or is displayed at the retail outlet from which the gasoline was sold, the retailer and such gasoline refiner shall be deemed in violation. The refiner shall be deemed in violation irrespective of whether any refiner, distributor, or retailer, or the employee or agent of any refiner, distributor, or retailer may have caused or permitted the violation.

(2) Where the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries does not appear on the pump or pump stand or

is not displayed at the retail outlet from which the gasoline was sold, the retailer and any distributor who sold the retailer gasoline contained in the retail outlet storage tank which supplied that pump at the time of the violation shall be deemed in violation.

(b) (1) In any case in which a retailer and any gasoline refiner or distributor would be in violation under paragraph (a) (1) or (2) of § 80.22 the retailer shall not be liable if the retailer can demonstrate that the violation was not caused by him or his employee or agent.

(2) In any case under paragraph (a) (2) of § 80.22 in which two or more distributors have sold the retailer gasoline contained in the retail outlet storage tank which supplied the pump from which the gasoline was sold, any of such distributors who can demonstrate that the violation was not caused by him or his employee or agent shall not be liable.

(c) In any case in which a retailer or his employee or agent introduced leaded gasoline from a pump from which leaded gasoline is sold into a motor vehicle which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, only the retailer shall be deemed in violation.

##### § 80.24 Controls applicable to motor vehicle manufacturers.

The manufacturer of any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline shall:

(a) Affix two permanent, legible labels reading "Unleaded Gasoline Only" to such vehicle at the time of its manufacture, as follows:

(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle: *Provided, however,* That the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label; and

(2) One label shall be located immediately adjacent to the gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet.

Such labels shall be in the English language in block letters which shall be of a color that contrasts with their background.

(b) Manufacture such vehicle with a gasoline tank filler inlet having a restriction with an inside diameter not greater than 0.910 inch (2.311 centimeters), which prevents the insertion of a nozzle with a spout larger than prescribed in § 80.22(f)(2)(i). Such filler inlet shall be designed so as to activate immediately any automatic shutoff device on any nozzle subject to § 80.22(f)(1) when the introduction of gasoline into such filler inlet from such a nozzle is attempted.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **FUEL REGULATIONS**

Control of Lead Additives  
in Gasoline

## Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL  
PROTECTION AGENCYPART 80—REGULATION OF FUELS AND  
FUEL ADDITIVES

## Control of Lead Additives in Gasoline

On February 23, 1972 (37 FR 3882), the Administrator proposed regulations providing for the general availability of lead-free gasoline by July 1, 1974 and a reduction in the lead content of leaded gasoline to 1.25 grams per gallon by 1977. The lead-free gasoline regulations were proposed primarily to ensure the availability of lead-free fuel for use in automobiles designed to meet Federal emission standards with lead-sensitive emission control devices. The Agency recognized that these regulations would also result in a reduction in lead emissions from the new automobile segment of the vehicle population, which would be equipped with those devices. However, based on public health consideration, it was considered necessary, to propose a reduction in the lead content of leaded gasoline as well.

After consideration of the information provided during public hearings and an extended comment period, as well as additional information on the health effects of airborne lead and the adverse effects of lead on emission control devices, the Administrator determined that the two regulations should be dealt with separately. On January 10, 1973, the regulations providing for lead-free gasoline were promulgated, and the regulatory sections providing for a reduction in the lead content of leaded gasoline were repropoed. (38 FR 1255 and 38 FR 1258)

The leaded gasoline regulations were repropoed because the Agency's position on the health effects associated with lead emissions changed substantially. The Administrator had originally proposed the regulations based on the conclusions that airborne lead levels exceeding 2 micrograms per cubic meter were associated with a sufficient risk of adverse physiological effects to endanger public health. After evaluation of the public comment and additional information on this issue, the Administrator determined that it was difficult, if not impossible, to establish a precise level of airborne lead as an acceptable basis for a control strategy. The original health effects analysis was reevaluated in view of this finding. The resulting new health position paper concluded that airborne lead can either be directly absorbed through the lungs as people breathe, or can settle out of the air to contaminate dirt which may be consumed by children. Strong evidence existed which supported the view that through these routes airborne lead contributes to excessive lead exposure in urban adults and children. In light of this evidence of health risks, the Administrator concluded that it would be prudent to reduce preventable lead exposure.

The repropoed regulations provided for a reduction in the average lead content of leaded gasolines to 1.25 grams per

gallon over a four year period as follows: 2.00 grams per gallon in 1975, 1.70 grams per gallon in 1976, 1.5 grams per gallon in 1977, and 1.25 grams per gallon in 1978. The specified average lead levels referred to the average lead levels of leaded gasoline produced by an individual refinery during any quarter of the specified year.

The final regulations contain a revised lead-reduction schedule based on the Administrator's determination that averaging over all grades of gasoline, including lead-free grades, is preferable to averaging over the leaded grades alone. The schedule has been adjusted to moderate the impact in the early years and to extend it for an additional year. This is discussed in greater detail below. The revised schedule prescribes lower allowable lead content levels, but the overall amount of lead used in gasoline would equal the lead usage expected to result from the repropoed leaded grade reduction schedule in 1979. The reduction schedule under this total pool averaging approach is 1.7 grams per gallon in 1975, 1.4 grams per gallon in 1976, 1.0 grams per gallon in 1978, and 0.5 grams per gallon in 1979. The various averaging alternatives considered by the Administrator are discussed below.

The repropoed reduction schedule was designed to accomplish a 60-65 percent decrease in lead usage from base 1971 by supplementing the projected increasing use beginning in 1974 of lead-free gasoline by new automobiles with catalytic (lead-sensitive) emission control systems. The schedule promulgated below also is designed to achieve the targeted decrease, and generally maintain the repropoed average lead contents for the leaded grades of gasoline.

The Administrator's judgment is that the promulgated reduction schedule is reasonable from the standpoint of protection of health and from the standpoint of economic and technological feasibility. While implementation of this schedule is reducing lead content of gasoline, a joint effort will be made by the Agency and the Department of Health, Education and Welfare to further examine lead emissions from automobile exhausts, to determine whether additional regulation is necessary.

**Statutory basis.** Section 211(c)(1) of the Clean Air Act authorizes EPA to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine . . . if any emission products of such fuel or fuel additive will endanger the public health or welfare". The scheduled reduction in the use of lead additives in gasoline to achieve a significant reduction in lead emissions from motor vehicles by 1978 is based on the finding that lead particle emissions from motor vehicles present a significant risk of harm to the health of urban populations, particularly to the health of city children. It is the Administrator's view that the statutory language quoted above does not require a determination that automobile emissions alone create the endangerment on which controls may be

based. Rather, the Administrator believes that in providing this authority, the Congress was aware that the public's exposure to harmful substances results from a number of sources which may have varying degrees of susceptibility to control.

**Health implications of airborne lead—Introduction.** The issue concerning the contribution of automobile lead exhausts to the country's lead exposure problem is complex and controversial. In order to complete a fair assessment of this problem, EPA has made a concentrated effort to obtain and review all the medical and scientific evidence. The Agency has repeatedly requested information and comments from the medical and scientific communities as well as the general public. Since the repropoal of the regulations, information gathered through the comment period on the repropoed regulations, earlier comment periods on the originally proposed regulations, and surveys of relevant studies by EPA personnel have been thoroughly reviewed and evaluated by a task force of EPA medical experts and scientists. A paper entitled "EPA's Position on the Health Implications of Airborne Lead" sets forth in detail the Agency's evaluation that there is a health basis for reducing the use of lead in gasoline. A copy of this paper is available from the Publications Section, Environmental Protection Agency, 401 M Street SW, Room 238W, Washington, D.C. 20460.

**General summary of health issue.** Environmental lead exposure is a major health problem in this country. A small but significant portion of the urban adult population and up to 25 percent of children in urban areas are over-exposed to lead. The lead exposure problem is caused by a combination of sources including food, water, air, leaded paint, and dust. The aggregate contribution of lead from all these sources poses a significant threat to health. However, it is extremely difficult to determine what percentage of the problem each separate environmental factor contributes. Since these are additive sources whose importance varies considerably among individuals it is likewise difficult to determine what impact would be achieved by partial or total reduction of lead from any source. Should the lead in all sources be reduced, however, it seems clear that the situation would be substantially improved. Leaded gasoline is a source of air and dust lead which can be readily and significantly reduced in comparison to these other sources. It is also one of the few lead sources not yet subject to any controls other than EPA's lead-free gasoline regulations.

Lead from gasoline accounts for approximately 90 percent of airborne lead, total lead additive usage being well over 200,000 tons a year. Lead from stationary sources and deteriorating leaded paint from buildings, combined with lead from gasoline cause high lead levels in dirt and dust. Of these sources, lead from gasoline is the most ubiquitous source of lead found in both the air and the dirt and dust in urban areas. Human exposure to this lead takes place by in-



halation and by ingestion of dirt and dust contaminated by air lead fallout. Since exposure to lead among the general population is widespread, it is reasonable that efforts be made to reduce preventable sources of lead exposure including lead emissions resulting from lead in gasoline.

Many of those disagreeing with the repropoed regulations based their comments on EPA's failure to show sufficient evidence of adverse health effects specifically caused by the use of lead additives in gasoline. While most agree that the combustion of leaded gasoline causes an increase in the amount of lead in the environment, they do not believe that lead in gasoline represents a sufficient endangerment to health or a sufficient risk to the environment to warrant promulgation of controls. The arguments against the position set forth in EPA's repropoed regulations include the following: (1) EPA has failed to show a clear correlation between lead levels in the air and those in the blood of exposed individuals; (2) lead from dust and dirt does not represent a significant threat to body burden of lead; (3) leaded paint is the primary cause of childhood lead poisoning and lead in gasoline does not play an important role in lead poisoning or excessive lead exposure; (4) lead in food and water and not airborne lead are the principal sources of lead to the general population.

A discussion of the four major areas of criticism and a summary of the significant new information received since the regulations were repropoed are provided below.

*1. Is there a correlation between air lead levels and blood lead levels?* A portion of the comments received were critical of EPA's repropoed regulation on the basis that consistently strong correlations have not been found between air lead and blood lead levels. The conclusion expressed by many comments is that except for persons whose occupations bring them in close contact with environmental lead, exposure to airborne lead does not contribute to increased blood lead levels and does not pose a significant threat to health.

These comments cite several studies which did not demonstrate a strong correlation between air lead and blood lead levels. For example, The Seven Cities Study did not show a close correlation between increase in blood lead levels and simultaneous increases in air lead exposures. Blood lead levels were lower among the New York City residents studies than the Philadelphia residents, despite the fact that air lead exposures among the New York residents were actually greater than those in Philadelphia. Also cited as evidence against EPA's position is the observation that despite significant increases in the use of lead in gasoline in recent years there have been no discernible increases in blood lead levels of populations so exposed.

Residential differences in blood leads levels have also not always corresponded to differences in air lead exposures. For example, studies of primitive populations,

as well as studies of rural U.S. populations, have shown that the blood lead levels in some of these groups are as high or higher than those of persons living in industrial areas, even though the air lead levels in those rural areas should have been much lower. A comparison between London day and night taxi drivers has also shown no significant differences in blood lead levels but did find differences in exposure to carbon monoxide suggesting that despite the possibility that air lead exposure in the day may have been higher than at night, this was not reflected in blood lead increases. However, differences in smoking intensity, as well as actual differences in air lead exposure between groups, could explain these results and neither were measured.

In summary, a number of comments have criticized EPA's position on the basis that there is not a good correlation between air lead exposure and blood lead levels.

The Agency has weighed against these criticisms studies which have shown that airborne lead does contribute significantly to lead exposure in the general population. For example, using a pilot lead isotope approach, preliminary data show that airborne lead at  $2 \mu\text{g}/\text{m}^3$  can contribute as much as  $\frac{1}{3}$  to total lead exposure in man. This result is consistent with data concerning the deposition of lead particles in the pulmonary tract and the absorption of such particles into the blood stream.

An unpublished study in Japan similar to the Seven Cities Study, but which has not yet been completely analyzed, has preliminarily demonstrated that airborne lead exposures below  $2 \mu\text{g}/\text{m}^3$  affect blood lead levels.

Chamber studies in carefully controlled environments, have shown significant increases in blood lead of men exposed to air lead slightly greater than  $3 \mu\text{g}/\text{m}^3$ .

Differences in the blood lead levels between urban and suburban residents in the same geographic area have been found. When comparable groups with similar lead intakes from other sources besides air were studied, blood leads were consistently higher in urban areas and near highways where air lead concentrations were greatest. Thus while correlations between blood leads and air lead at lower exposure levels are not always good, the evidence indicates that air lead does contribute to general population lead exposure.

Failure to find consistent correlations does not in the Administrator's judgement invalidate the above conclusions. Studies which have come to contrary conclusions have generally failed to take into account the influence of other sources of lead on blood lead levels in people being studied. In the Seven Cities Study, for example, these other sources of lead influencing blood lead levels were not adequately considered in the blood lead-air lead comparisons. EPA has re-analyzed the Seven Cities Study and has found that air lead was a significant, though not the most influential factor affecting blood lead levels. Further, in

the Seven Cities Study, urban-suburban differences in blood leads between comparable groups were consistently found which at least in part reflect differences in air lead exposure.

In summary, absorption of air lead does contribute to total lead exposure and when added to lead from other sources such as food and water results in total exposure that is excessive. Thus, the partial removal of lead from the air will help to reduce the degree of excess lead exposure which currently exists among adults and children in the United States.

*II. Does dust lead contribute to lead poisoning in children?* Many comments received by the Agency express the viewpoint that the primary cause of lead poisoning in children is ingestion of lead-based peeling paint. Investigations of cases of clinical lead poisoning in children have repeatedly demonstrated peeling leaded paint as the major source of exposure. Since peeling leaded paint has consistently been observed in the environment of lead poisoned children, many commentators thought it unlikely that lead in dust and dirt could make a significant contribution to this problem. They also point out that lead in dust could be caused by peeling or erosion of leaded paint in or near a home.

One commentator cites X-ray studies of the abdomen among children with lead poisoning as showing paint chips in the majority of instances. Another argues that differences in blood lead levels between Black and Puerto Rican children could not be explained by exposure to different quantities of lead in dust. Further, studies have shown that animals do not absorb lead from dust as readily as they absorb lead from paint.

Commentors have criticized the Agency for considering that the El Paso Study supports the dustfall hypothesis related to lead in gasoline. In the El Paso Study, children living near a lead smelter were examined for blood lead levels and for sources of lead in their environment. These results showed that children living nearest the smelter had the highest blood lead levels and that dust lead was a probable major cause. Many commentators, however, considered the El Paso Study applicable only to stationary lead sources and not to lead in gasoline which is different in particle size and chemical composition from smelter-emitted lead.

EPA recognizes the importance of leaded paint as a source of lead exposure for children and that it is the primary cause of clinical lead poisoning. However, based on the evidence available to it, EPA does not believe that leaded paint is the only significant source of lead contributing to excessive lead exposures in children. The Agency's position is that numerous sources contribute to childhood exposure including lead in food, water, air, dust, and dirt as well as paint. Among these sources, contaminated dust and dirt from motor vehicles exhausts are believed to be important exposure routes.

Currently, the contention that lead contamination of dust and dirt by automotive emissions is a significant source of lead exposure is a hypothesis consistent with information provided by a vari-



ety of studies. However, at this time, not all links in the argument have been established beyond dispute and no single study has collectively inter-related all steps in the exposure process to conclusively inter-related all steps in the exposure process to conclusively prove or disprove the hypothesis. Despite the existing uncertainties, comments received from the majority of scientists not affiliated with industrial or environmental groups support the contention that dust is an important source of exposure. This is based on the following evidence:

A. Environmental sampling in a number of cities has demonstrated the ubiquitous presence of lead contaminated dust in urban areas. These measurements were taken inside and outside of buildings including homes and schools. Dust lead measurements outside homes commonly ranged from 0.1 to 0.5 percent lead by weight. Measurements well in excess of 0.5 percent have also been recorded. Inside homes, samples were found to contain lead contents ranging from 0.05 to 0.2 percent and in some instances as high as 0.5 percent. Current Federal regulations have already established that lead concentrations in paint in excess of 0.5 percent represent a definite hazard to children and serious consideration is being given to reducing the allowable level to 0.06 percent. In testimony before the United States Senate, Dr. Merlin DuVal, at the time Assistant Secretary for Health and Scientific Affairs at HEW, commented on an appropriate safe level for lead in paint:

Based on information now available to us, we are satisfied that it is technologically feasible, and desirable from a health viewpoint to move toward the .06 percent standard recommended by the American Academy of Pediatrics.

B. As was stated above, high lead concentrations in dust are prevalent in urban areas. It is not clear in all instances, which sources are contributing most to this contamination. Comments received by the agency point out that high lead levels in some cases may be caused by the chipping or peeling of leaded paint from interior and exterior surfaces. EPA agrees that this is true. In other cases, the lead dust content is clearly the result of lead emission from stationary sources such as smelters. However, EPA believes an important and the most ubiquitous source of lead in dust is the exhaust of automobiles using leaded gasoline. Annually, over 200,000 tons of lead are used as additives in gasoline. The vast majority of this lead is emitted into the environment. Although significant amounts of lead remain airborne for extended periods of time, evidence indicates that a large quantity of the exhaust lead rapidly settles to the ground within several hundred feet of the source. Measurements of lead in dust and soil further indicate that lead content decreases with increased distance from the roadway. It has also been found that dust lead levels in homes near heavily traveled roadways are significantly higher than in comparable homes located along side streets.

It should be noted that the majority of studies reporting high levels of lead in dust and dirt did not associate sources of peeling leaded paint or stationary lead sources with the lead dust measurements. Accordingly, the Agency believes that in most circumstances lead from automobile exhaust is the primary source of lead in dust and soil in urban areas.

C. The general environment of urban children commonly includes dirt and dust contaminated with lead. A large percentage of children, especially between the ages of one and three years, are known to ingest non-food objects in their mouths. It has been demonstrated that children living in high dust lead environments have greater quantities of lead on their hands than children living in less contaminated environments. The existence of leaded dust on the hands of urban children has been highlighted by the common occurrence of inadvertent lead contamination of finger prick blood lead specimens taken from these children.

D. Children who ingest leaded dust and dirt can be expected to absorb some of the lead into their bodies. Though it is difficult to determine the precise amount of lead that would be absorbed, animal experiments suggest that appreciable quantities of this lead, whether from smelters, paint or gasoline exhaust, are absorbed. Further, it has also been shown that at least some children residing in environments heavily contaminated by leaded dust and dirt absorb enough to suffer from subclinical and even clinical effects of lead overexposure. This was particularly true in the case of El Paso, mentioned above. Though the lead source was a smelter, animal studies indicate that lead in dust due to leaded gasoline would be absorbed in quantities comparable to that emitted by the smelter. Another study from Charleston, South Carolina indicates that children residing in homes near high soil lead concentrations had a greater frequency of lead poisoning than children residing in less contaminated areas. This study suggests that lead from soil was absorbed, although it is not clear what sources were primarily responsible for those high soil lead levels. It should be further noted that instances such as those above, coupled with known high levels of lead in dirt and dust, indicate that children could easily ingest enough lead by this route to be significant.

E. Various studies indicate that cases of lead poisoning and significant overexposure are not always associated with urban home environments in which sources of peeling or chipping leaded paint were observed. These studies include children residing primarily in inner city areas. Admittedly children may be exposed to peeling or chipping leaded paint in environments away from their own homes. However, since several recent studies indicate that up to 50 percent of children with excessive lead exposure are known to not reside in homes where peeling lead based paint can be found, it is unlikely that peeling paint exposure away from the homes accounts

totally for this difference. Furthermore, extension of blood lead screening programs outside of slum areas indicates that the lead exposure problem is found in children residing in higher income areas where peeling paint is not frequent and exposure to this source away from the home is less likely. In conjunction with these findings, residence near roadways have been found to contain higher quantities of lead than those measured away from the road. Findings such as these indicate that in some circumstances dust lead is an important factor and at times may be the primary factor contributing to excessive lead exposure associated with subclinical if not clinical effects.

F. Clinical symptoms resulting from very high lead exposure in children are known to be associated with permanent neurologic damage. It has also long been suspected, but not proven beyond doubt, that lead exposures below those sufficient to cause clinical symptoms in children are also harmful. In particular it has been observed that physiologically significant biochemical changes occur in children with excessive exposures below clinical toxicity and it has been proposed that these changes are reflective of subclinical changes that precede overt disease. Recently available scientific information, though far from completely resolving this issue, supports the view that adverse effects due to lead in children are not confined only to situations in which overt clinical symptoms of lead poisoning occur. Included in these findings are increased subtle neurological impairments among children more highly exposed to lead below levels known to cause clinical disease.

III. *Will a reduction of lead in gasoline reduce the incidence of clinical lead poisoning in children?* Ingestion of peeling paint has long been recognized as the primary cause of clinical lead poisoning in children. This position has been expressed in many comments received by the Agency including those from several noted authorities in the field of lead poisoning. For this reason, numerous comments have questioned the need to reduce lead in gasoline on the basis that this action would have little if any impact on reducing the incidence of clinical lead poisoning in children.

While EPA recognizes the importance of leaded paint as a source of lead for children and has supported governmental efforts to reduce this risk, the findings of several studies suggest that lead poisoning can develop in the absence of significant sources of leaded paint. Though this possibility does not affirm that reducing lead in gasoline will reduce the incidence of lead poisoning in children it indicates that lead in gasoline may, in conjunction with other non-paint sources, contribute to the development of lead poisoning. Whatever the impact this reduction may have upon clinical lead poisoning, the action will significantly reduce lead exposure among children.

EPA is also concerned about the probability that children exposed to lead at



levels below those associated with clinical poisoning are also being adversely affected. Several effects identified as sub-clinical lead effects include impairment of fine motor functions, and altered behavior.

It is noteworthy that in a significantly large percentage of excessive lead exposure cases (up to 50 percent in some instances) peeling lead based paint in the home cannot be identified as a source of the exposure. Thus, while leaded paint is recognized as the major cause of childhood lead poisoning, it is not clear that leaded paint is singly responsible for the large degree of excess childhood lead exposure in this country.

*IV. Excess lead exposure among the general population could result from a combination of lead sources, not one of which by itself is sufficient to be a problem. Under these circumstances, would it not be preferable to formulate a control strategy based upon reducing lead levels among those sources that contribute the most to this total exposure? It is generally agreed that food is the major source of lead to the general population. A World Health Organization expert committee reports that according to the results of total diet studies in industrialized countries, the total intake of lead from food generally ranges from 200-300 ug per person per day. WHO further states that based upon available data, these levels are similar to those found in the past 30-40 years and that no upward trend in lead levels in food is evident.*

This information suggests that the level of lead in food has remained relatively constant in recent times. Though lead in food would certainly contribute to total lead exposure for the general population, lead in food is probably not the source that is most readily reduced in the event that total exposure to lead is excessive. According to WHO, "Any increase in the amount of lead derived from drinking water or inhaled from the atmosphere will reduce the amount that can be tolerated in food. The lead in air is probably the contribution that is most accessible to action for reducing the total body burden of lead, especially where this fraction is large compared with that absorbed from food."

*V. What new information has become available since reproposal of the regulation and as a result of the additional comment period? The majority of comments addressed the evidence presented by EPA in support of its proposed regulation and did not introduce new evidence. The number of comments received were approximately evenly divided between those in favor and those against. The bulk of comments critical of EPA's health position was submitted by industry or industry affiliated scientists. Independent scientists who commented, not affiliated directly with the industry or environmental groups, were in favor of the regulation by approximately 2/1. Most favorable comments, though often from scientists knowledgeable in the field of lead, provided testimonial support rather than new evidence. Most new data that either was presented in comments or*

which subsequently became available to EPA does support the need to reduce lead emissions from automobiles. Among these latest data are the following:

(1) Studies of subclinical lead effects in children continue to suggest that fine motor function and behavior are affected. Though this issue is not completely resolved, the new data emphasize the potential subclinical risk.

(2) It has been reaffirmed that high dust lead levels, up to 1% lead content, have been found in children's play areas, inside schools and in homes.

(3) New evidence reaffirms that high dust lead levels can be caused by leaded gasoline. A recent study in Rochester, New York, demonstrates that high dust lead levels in homes are not always associated with peeling paint and that house dust lead levels are higher in urban than suburban homes. A study in Vermont has shown that higher concentrations of lead in house dust are found in homes located near busy roads compared to homes on sidestreets. This latter point is consistent with the previously known fact that air lead fallout decreases with increased distance from roadways. A study by EPA in New York City indicates that higher household dust and soil lead levels are found in areas with greater dust lead fallout from the air as compared to areas with little lead fallout.

(4) Young children living in homes with high dust lead contents have been found to have more lead on their hands than children in homes with low dust lead content. This finding provides an important link in the dust fall lead hypothesis. The finding is consistent with observations that finger prick blood-lead specimen taken from children are routinely contaminated by lead that is present on the fingers.

(5) Studies continue to indicate that a high degree of exposure to environmental lead is not confined to inner city areas. Cases of over-exposure continue to be reported from areas in which leaded paint would not be expected to be the predominant factor.

(6) Studies from Newark, New Jersey, observed that the frequency of lead poisoning and undue lead exposure is doubled among children living close to major roadways compared to children living farther away.

*Other means of achieving lead reductions.* Before prescribing regulations based on public health consideration, the Administrator must consider "other technological or economically feasible means of achieving emission standards under section 202." Thus, if EPA determined that a reduction of lead emissions from motor vehicles is necessary for protection of public health or welfare, the feasibility of achieving such a reduction under section 202 (new motor vehicle emission standards) must be considered.

The primary alternative to the use of lead additive regulations to achieve reduction in lead emissions would be to impose a lead emissions standard which would result in the installation of "lead-

traps" on motor vehicles. The possibilities of incorporating this alternative, however, are limited by the existing legal and technical realities.

EPA does have the authority to impose a lead emissions standard on new vehicles which would result in the use of lead traps. The earliest that such a regulation could be imposed, however, would be the 1976 model year. Most motor vehicle manufacturers are expected to use lead sensitive emissions control systems to meet the Federal emissions standards which are applicable to new vehicles in 1976. Lead traps cannot adequately protect these systems because they are not capable of trapping all of the lead emitted. Lead-free gasoline will be required in most new vehicles based on the information now before the Agency. See Aerospace Report, PB-205-981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151. Accordingly, the use of lead traps is relevant principally with regard to in-use vehicles. EPA realizes that lead-tolerant emission control systems may be used on a progressively greater number of new vehicles in the future. However, many of the new technology lead tolerant control systems are expected to operate on low octane gasoline which may not require lead additives. Nevertheless, the Agency is continuing to study the feasibility of using lead traps on new vehicles in the future.

The Clean Air Act does not authorize EPA to establish national emission standards on in-use vehicles. Since lead traps cannot be used successfully on the vast majority of new vehicles and the Agency is legally incapable of requiring them on all in-use vehicles, the use of lead traps is really not a feasible alternative at this time in the Administrator's judgment.

Despite the legal authority obstacle EPA has examined the technological capabilities and costs of lead traps and has determined the regulation of lead additive use is the preferable method of controlling lead emissions.

*Other emissions.* Concern has been expressed that the control of lead additives may result in the use of other gasoline components or additives which may also have an adverse impact on health. EPA has evaluated the potential use of other additives or greater percentages of certain gasoline components in conjunction with the lower lead levels. This evaluation has been performed in recognition of the Agency's responsibility to assess the environmental consequences of its actions. (See Judge Leventhal's opinion in *Portland Cement V. Ruckelshaus*, 5 ERC 1593, 1599, U.S. App. D.C. (1973).)

Lead additives are used as efficient octane boosters in gasoline. If the use of lead is restricted, the refiner must use greater quantities of blending stocks with high aromatic hydrocarbon concentrations, or substitute anti-knock additives, to increase gasoline octane levels. Consequently, the Administrator has considered the effects of increased aromatic hydrocarbon content of gasoline or the use of manganese additives on emis-

sions from the general motor vehicle population and the effects of these emissions on health. EPA has also considered the impact of the regulations on particulate emissions.

*A. Impact due to increased use of aromatics.* The implementation of the promulgated and repropounded lead regulations is projected to result in a 5 to 7 percent increase in the average aromatics content of gasoline. Concern has been expressed that this increase will cause a complementary increase in the reactivity of automobile exhaust and in the quantity of polynuclear aromatic emissions from the motor vehicle population. EPA has determined that neither the reactivity of automobile exhaust or the emissions of polynuclear aromatics will increase above current levels due to the lead regulations.

Emissions reactivity. Gasoline is composed of three general types of hydrocarbon: aromatics, olefins, and paraffins. Aromatics and olefins are highly reactive and facilitate the formation of photochemical smog. Assuming no hydrocarbon emission controls, aromatics emissions are linearly related to the aromatic content of gasoline. Olefin emissions are directly related to the olefin and paraffin content of gasoline. An increase in the aromatic content of gasoline is accompanied by a decrease in the paraffin and olefin content. Consequently, reactive aromatic emissions increase resulting from an increase in the aromatic content of gasoline are generally offset by a decrease in the reactive olefin emissions due to a complementary reduction in the olefin and paraffin content of the specified gasoline. Accordingly, the increase in the aromatics content in gasoline will not have a significant impact on automobile emissions reactivity.

The lack of increase in exhaust reactivity due to increased use of aromatics has been verified in smog chamber studies completed by the Bureau of Mines as well as EPA. It should also be noted that aromatic emissions from the automobile population will continue to decrease as vehicles with increasingly stringent hydrocarbon emission control systems replace older uncontrolled vehicles on the road.

A detailed analysis estimating exhaust reactivity and the effect of the EPA fuel regulations has been conducted and reported by Dr. A. P. Altshuler in "Effects of Reduced Use of Lead in Gasoline on Vehicle Emissions and Photochemical Reactivity," February, 1972. This paper is available from the Environmental Protection Agency's Office of Public Affairs, Publications Section, Room 238 W, 401 M Street, SW., Washington, D.C. 20460.

*Polynuclear aromatic emissions.* Polynuclear aromatic hydrocarbons (PNA) are carcinogenic and are primarily caused by hydrocarbon emissions from stationary sources such as petroleum refineries and coke ovens. Currently automobile emissions account for less than 2 percent of total PNA emissions.

Polynuclear aromatic emissions from the general automobile population have

been steadily declining since the introduction of hydrocarbon emission controls in 1968. Due to the continued attrition of older uncontrolled vehicles from the road and the introduction of new vehicles with stringent hydrocarbon controls, PNA emissions should be reduced by more than 75 percent from current levels by 1980. This assumes the implementation of both the promulgated lead-free and repropounded low-lead regulations will have a very slight impact on the rate of decrease in PNA emissions. According to a recent EPA analysis, PNA emissions will be reduced by 78 percent by 1980 assuming the implementation of the 1976 hydrocarbon emission standards. If the lead regulations are implemented, PNA emissions will decrease by 76 percent. (An analysis of this problem is contained in a paper entitled "Lead in Gasoline, Impact of Removal on Current and Future Automotive Emissions".) EPA concludes that the current use of lead additives endangers the public health to a greater degree than this difference of 2 percent in the rate of decrease of PNA emissions.

This relative endangerment judgment is based upon the following line of reasoning. Lead additive emissions from automobiles have been determined to pose a sufficient endangerment to health to warrant regulatory action. Mobile sources contribute less than 2 percent of the total polynuclear aromatics emissions. Implementation of the Federal emission standards without the lead additive emissions will result in an approximately 78 percent decrease in polynuclear aromatic emissions from current levels of automobile emissions. Implementation of the lead regulations will slow the rate of emissions decrease by about 2 percent. Assuming automobiles account for the same relative contribution of aromatics in 1980, implementation of the emission standards with the regulations as compared to without the regulations would only cause a 0.04 percent difference in reduction rate in total PNA emissions. In view of the continual decline in PNA emissions and any associated health risk, from stationary sources through particulate controls and from mobile sources through hydrocarbon controls, the health implication of the slight difference in PNA emissions due to the lead regulations is considered negligible.

Although the indication is that the lead regulations will not produce an aromatics or a PNA emission problem, EPA nevertheless has the authority to regulate the aromatic content of gasoline should such action become necessary.

*B. Particulate emissions from unleaded fuel.* Exhaust particulate resulting from the use of leaded and lead-free gasoline has been extensively examined. The examination concluded that since lead additives account for a major portion of exhaust particulates, the use of fuel without lead additives substantially decreases particulates emissions. This conclusion is true for vehicles equipped with emission control devices as well as uncontrolled automobiles.

*C. Use of substitute anti-knock additives.* Various anti-knock additives have been developed, but as is explained in the paper, "Lead in Gasoline" referred to above, the effectiveness of almost all of these additives is severely limited. Manganese is the only fuel additive besides lead which is now recognized as being a cost effective octane booster. While manganese additives are not currently in widespread use in gasoline, manganese may be used as a partial replacement for lead in gasoline. EPA has been examining the impact the use of manganese additives might have on control devices and on the public health.

One automobile manufacturer has recently completed tests using fuel containing 0.25 grams per gallon manganese in vehicles equipped with catalytic emission control systems. While no chemical poisoning was observed, a very high back pressure developed after several thousand miles. This back pressure was due to manganese oxides plugging the catalyst. Apparently, manganese oxides, unlike lead halides, are nonvolatile and physically destroy catalyst functioning by plugging. The 0.25 grams per gallon manganese is above the levels that would be used in fuel by only a factor of two. Accordingly, the plugging problem would eventually occur if manganese is used in lead-free gasoline. Furthermore, deterioration of catalyst performance would occur soon after an individual began using gasoline containing manganese additives. At the present time, the auto manufacturers have not requested that manganese additives be controlled. This may reflect the industry's expectation that manganese additives will not be used in lead-free gasoline. If it is used, EPA would have to consider regulating manganese additives under the authority of section 211(c)(1)(B) of the Clean Air Act.

Occupational experience indicates that airborne manganese at sufficiently high levels of exposure can cause damage to the central nervous system with symptoms similar to that in Parkinson's disease, and can cause manganese pneumonia. Available evidence indicates that dosages required to produce these adverse effects are several orders of magnitude above those that would be present in the ambient air as a result of even the widespread use of manganese as a gasoline additive. Thus, while there presently appears to be a reasonable margin of safety with use of manganese in gasoline, the health implications of this use require continued study. An EPA position paper on manganese is currently being prepared which will be available in the near future. This document will be based upon a comprehensive review of the information available on manganese directed by the National Academy of Sciences.

If regulation of manganese in gasoline for health reasons is found to be necessary, EPA has authority to do so under the Clean Air Act. Though the Agency does not currently have enough evidence to definitely say that manganese in gasoline would pose a threat to health, EPA would not favor the use of manganese in



gasoline until additional studies are completed. However, at this time, the use of manganese additives is judged not to pose as significant a risk to health as that from lead additives.

**Cost and energy impacts.** Recently EPA has worked with Bonner and Moore Associates to complete a study based on updated information of the impacts associated with the repropoed leaded grade regulations. This study separates the various costs according to two assumptions concerning the portions of the vehicle population which will use lead-free gasolines. The first case assumed all motor vehicles manufactured after 1975 will be equipped with lead sensitive catalytic emission control systems and will thus need lead-free gasoline. The second case assumed an ever increasing portion of the vehicles produced during model years after 1975 will be equipped with emission control systems capable of tolerating leaded gasoline. The second case assumed that by the 1985 model year, all new vehicles will have emissions control systems which can tolerate lead.

Based on this new data, EPA has calculated the annual consumer costs attributable to the low-lead regulations. This calculation includes the increased costs of raw stocks, as well as operating and production costs at the refinery. During 1980, capital investment in the refinery industry is predicted to be roughly \$1.5 billion. The low-lead regulation will force the industry to invest an additional \$82 million. If a lead-tolerant technology is gradually phased in and thus more leaded gasoline is used, the incremental investment impact of the low-lead regulation will be \$113 million. This figure will increase the cost of producing gasoline by less than .1¢ per gallon.

Recently, much concern has been expressed about the potential impact lead regulations would have on the nation's crude oil supply. The low-lead regulations will not go into effect until 1975 and will have a minimal impact on crude oil requirements during this decade. Modeling studies completed by Bonner and Moore Associates demonstrated no positive impact in either 1975 or 1977 on crude usage. If it is assumed that additional leaded gasoline is required to fuel new vehicles equipped with lead tolerant emission control systems which might be partially phased in between 1976 and the end of the decade the impact represents less than a .4 percent increase in crude usage by 1980. If one assumes catalysts are used on all future model vehicles and consequently the quantity of leaded gasoline produced continues to decline, the low-lead regulations never have a significant impact on crude requirements.

It is instructive to compare these numbers with the energy impact of air conditioners in automobiles. Air conditioners have been estimated to have a 13 percent impact on fuel economy. In 1980 if 75 percent of the automobiles are equipped with air conditioners, the impact on crude oil requirements will be approximately 800 thousand barrels per day or

roughly 4.4 percent of the nation's needs.

**Averaging strategy.** The lead regulations proposed on January 10, 1973, would permit each refinery (not company) to average its lead usage over quarterly production of leaded gasoline so long as the average lead content per gallon did not exceed the applicable standard. Leaded pool averaging was proposed for comment based upon the determination that this approach afforded optimum refining flexibility consistent with attainment of the Agency's goal of 60-65 percent reduction in lead usage.

In light of additional information and views received during the comment period, EPA has reviewed the merits of two alternatives to leaded pool averaging. These are (1) a system of total pool averaging, permitting a refinery to average its lead usage over all grades of gasoline produced including the unleaded grade, and (2) permitting each refinery a choice between leaded pool averaging and total pool averaging. Analysis of the impacts and practicalities of the alternative averaging approaches has led EPA to conclude that total pool averaging should be adopted.

Comparing the effects of leaded pool averaging and total pool averaging shows that refiners who market two grades of gasoline, one leaded and one unleaded grade, are significantly penalized by leaded pool averaging. Because two grade marketers are unable to count production of unleaded gasoline in computing the average, a leaded pool standard exerts pressure to market three grades of gasoline, including two leaded grades, to maximize allowable lead usage. Leaded pool averaging similarly tends to penalize three grade marketers who produce more than the industry average proportion of unleaded gasoline. It benefits refiners who produce little or no unleaded gasoline.

Total pool averaging is not expected to induce three-grade marketers to opt for two grades, but does not tend to discourage production of unleaded gasoline. A total pool standard permits each refiner to use the same amount of lead for equivalent gasoline production and is more neutral in its effect upon industry marketing decisions.

The alternative of allowing each refinery a choice between leaded pool and total pool averaging would permit each refinery to choose the system that maximizes lead usage. The price of this flexibility is that lead reduction goals would not be achieved. It is not possible under an option system to predict what reductions in lead usage would be achieved under the regulations. The reductions achievable under an option system would depend on the mix of leaded and unleaded gasoline sales, the sales volumes, and the marketing plans of all gasoline refiners. The option alternative does not permit reasonable estimates of the reductions in lead usage attainable under any given pair of standards.

A majority of the refiners who commented on the regulations recommended that total pool averaging be adopted.

The Administrator finds that total pool averaging is in fact the fairest workable mechanism for accomplishing the necessary reduction in lead usage.

**Computation of total pool standard.** The promulgation of a total pool average standard requires that the repropoed leaded pool standard be adjusted to take account of projected sales of all gasoline. The method of computation is to multiply the numerical leaded pool standard by the percentage of leaded gasoline sales estimated for the particular year. For example, 2 grams per gallon  $\times$  the percentage of 1975 sales of leaded gasoline = the total pool standard for 1975.

Future sales of unleaded and leaded gasoline cannot be predicted with complete assurance. Actual sales of unleaded gasoline will depend upon the number of vehicles requiring it to meet emission standards, the extent to which owners of vehicles not requiring unleaded gasoline will buy it, and the projected miles driven and fuel consumption of vehicles in the various model year classes.

A study entitled "Alternative Proposals for the Regulation of Lead Additives in Gasoline" prepared for EPA by the firm of Turner, Mason, and Solomon in June, 1972, sets forth estimates based on different assumptions affecting sales of leaded and unleaded gasoline. The estimates selected by EPA as most consistent with present trends in unleaded gasoline sales are provided in case I of the Turner, Mason and Solomon Report. Case I assumes no extension of the 1975 standards, eliminating the need for unleaded gasoline, but that owners of pre-1975 model year motor vehicles will purchase little or no unleaded gasoline.

EPA recognizes that the assumption that owners of pre-1975 vehicles will purchase little or no unleaded gasoline results in conservative estimates of unleaded gasoline sales, but this assumption is offset by the fact that not all 1975 vehicles will require unleaded gasoline.

Using the Case I estimates of future sales of leaded and unleaded gasoline, the conversion of the proposed leaded pool standard to a total pool standard is as follows:

Year	Leaded pool std.	Percent of sales unleaded	Total pool std.
1975....	2.0	82.2/17.8	1.644 = 1.6
1976....	1.7	69.8/30.2	1.186 = 1.2
1977....	1.5	59.5/40.5	.89 = .9
1978....	1.25	50.9/49.1	.63 = .6
1979....	1.25	43.6/56.4	.54 = .5

The promulgated reduction schedule is derived from the table above, but the schedule has been adjusted to moderate the economic and technological impacts of the regulations during the period over which the reductions would be accomplished. To achieve the targeted 60-65% reduction in lead usage requires that the schedule be extended to include 1979. The total pool standard corresponding to the proposed leaded pool standard for 1979 is .5 gram per gallon. As stated above, the schedule promulgated is as follows:

January 1, 1975-----	1.7 grams per gallon.
January 1, 1976-----	1.4 grams per gallon.
January 1, 1977-----	1.0 grams per gallon.
January 1, 1978-----	.8 grams per gallon.
January 1, 1979-----	.5 grams per gallon.

This reduction schedule will achieve the 60-65 percent reduction in lead usage and emissions as planned and will also assure that industry's lead usage under total pool standards is approximately the same as the lead usage projected under the leaded pool standards previously proposed.

The standard will have to be evaluated in 1978 to determine what further reductions in the lead standard, if any, are necessary to maintain lead emissions at the desired level. Presumably no further reductions will be required if unleaded gasoline remains the fuel required for new motor vehicles. If unleaded gasoline is no longer required for new vehicles, the 1978 standard will be reexamined in light of increasing gasoline demand.

**Combining refineries for purposes of averaging.** Two refineries have requested that the regulations be changed to authorize EPA to approve combinations of refineries for purposes of computing the average instead of requiring averaging at each refinery. This approval would be requested to enable a company to concentrate production of leaded or unleaded gasoline at particular refineries.

EPA proposed averaging at each refinery instead of each company in order to mitigate any regional variation in lead emissions due to averaging. Regional variation could result from the mix of gasoline grades sold in a particular market if a company used its lead allotment mainly in one grade or from a company's decision to produce high-lead gasoline at an old southeast refinery and low-lead gasoline at a newer west coast facility, each serving different markets. Requiring lead levels to be moderated at each source is a reasonable effective means of minimizing variation in the area where the gasoline is actually sold.

Although one company has suggested that the location of the refineries in a particular EPA region might serve as a basis for approving combinations, this criterion does not provide assurance that the areas served by those refineries and other refineries would not be subject to variation in lead emissions. There is no necessary correlation between the location of the refineries and their service areas. The Administrator has concluded that there are no workable criteria for assessing the impact of combinations for purposes of averaging and that the refineries' desire for added flexibility in lead usage cannot be accommodated without compromising the objective of minimal variation in reduction in lead emissions in all parts of the country.

**Averaging period.** Many refineries requested an annual or semiannual averaging period instead of the quarterly period proposed. A longer averaging period would accommodate seasonal variations in lead usage. Because high volatility, high octane blending stocks are used in the winter season to facilitate cold starts, less lead is needed in winter blends. The

refiners would like to be free to put more lead in summer blends, and a longer averaging period would make this possible.

The summer season is also the period of maximum exposure to airborne and dustborne lead for both children and adults. For this reason, EPA is unable to agree to the change proposed in the averaging period.

**Small refineries.** The repropoed regulations provided for a one-year delay of the requirement to comply with the lead reduction schedule for small refineries, as defined in § 80.20(b), in recognition of special lead-time problems faced by this group. EPA has reviewed the lead-time requirements of the small business refineries with particular reference to the effect on lead-time, if any, of the change to a standard based on total pool averaging. The Agency recognizes that under the repropoed leaded pool standard, refineries producing little or no unleaded gasoline received the benefit of a higher average lead level per gallon of leaded gasoline. Some small refineries fall into this category, and would have been able to use more lead under a leaded pool standard taking account of production of unleaded gasoline by other refineries.

EPA's evaluation of the small refineries' situation has led to the conclusion that these refineries require additional lead-time for compliance beyond the one year deferment previously proposed. This appears to be the case regardless of the averaging strategy adopted. Industry and consultants' estimates of time required by small refineries to plan, finance, and construct upgraded refining facilities range from two to three years from the date of promulgation of final standards. Accordingly, the Administrator has determined that it is reasonable and necessary to defer the requirement for compliance by small refineries until January 1, 1977. On this date, small refineries are required to comply with the 1977 standard.

**Review of lead reduction program.** In the January 10, 1973, repropoal of the regulations, the Administrator stated his intention to reduce the lead content in gasoline as much as possible, giving consideration (a) to the degree of reduction achieved by introduction of unleaded gasoline and (b) evidence on the feasibility of reducing lead from other environmental sources. It is too early to state whether unleaded gasoline sales will expand steadily through the seventies. Studies of potential reduction in lead from other sources are in progress. Accordingly, the Administrator has determined that it would be premature to announce a decision on the need for further reductions in lead in gasoline. EPA will review progress under the regulation as well as additional studies every three years, beginning in 1977. This review will afford a firmer basis for a decision on whether further action is necessary to regulate lead in gasoline to protect public health and welfare.

**Reporting by lead additive manufacturers.** The January 10, 1973 repropoal included a requirement that lead additive

manufacturers would report quarterly to the Administrator on their shipments of lead to each refinery. No comments were received on this proposal, which is promulgated below as proposed. The basis for the requirement—that it is determined to be necessary for verification of lead additive usage reports by refineries—has not changed.

**Prevention of violations by refineries.** As a complementary measure to the January 10, 1973 promulgation of a strict liability provision in § 80.23 applicable to refineries, the Agency on that date proposed a provision specifying that it is the refiner's duty to prevent violations of § 80.22(a). Two refineries and one petroleum trade association commented that practical and legal considerations made the regulation unreasonable, particularly as regards the requirement on permitting violations. One other refiner commented that if the requirement was to be adopted, it should provide for a showing by the refiner that he in fact did not cause or permit a given violation.

The issue of vicarious liability under § 80.23 is now in litigation and the Agency is engaged in negotiations with refineries which may lead to revision of the provision. Accordingly, no action is being taken on the proposed § 80.20(c), but it is not being withdrawn.

**Control of lead under Title I.** One commentator has contended that the Clean Air Act requires the Administrator to establish a national ambient air quality standard for lead under Title I or, at least, to impose controls under § 211 that would achieve results which would be as protective of health on as expeditious a timetable as could have been achieved under Title I. The commentator, an environmental group, concludes that the repropoed lead reduction schedule would achieve "far less effective and timely results than action under Title I because the repropoed schedule is so weak," and petitioned EPA for the issuance of national ambient air quality standards for lead.

It is clear from Agency actions to date that the Administrator has chosen to regulate lead emissions under section 211 of the Act. No action on lead under Title I is currently planned.

It is the Administrator's judgment that he may regulate a substance under section 211 without necessarily tailoring his action to what could have been accomplished under sections 108, 109, and 110, since section 211 is a co-equal grant of regulatory authority. The determination whether to issue a criteria document for a substance and thereby set Title I actions in motion is discretionary with the Administrator. Section 108 expressly recognizes this, inasmuch as it required the Administrator to list for action under Title I only those air pollutants "for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970, but for which he plans to issue air quality criteria. (emphasis added) This falls considerably short of a statutory directive to issue criteria for lead,



and may be contrasted readily with the requirements of section 202(b) of the Act specifically identifying carbon monoxide, hydrocarbons, and oxides of nitrogen for regulatory action. While, as the commentator points out, language in the Senate Report on its version of the 1970 Clean Air Act amendments stated that the bill would require issuance of a criteria document for lead, this must be construed as only a statement of the Committee's preference, since no such requirement appeared either in the language of the Senate or the conferees' bill. The regulations promulgated below shall be effective on January 7, 1973.

(42 U.S.C. 1857f-6c, 1857g(a))

Dated: November 28, 1973.

JOHN QUARLES,  
Acting Administrator,  
Environmental Protection Agency.

Part 80 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 80.1, the second sentence is revised to read as follows:

§ 80.1 Scope.

... These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will endanger the public health, or will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulations promulgated; and certain other findings specified by the Act.

2. In § 80.2, a new paragraph (m) is added as follows:

§ 80.2 Definitions.

(m) "Lead additive manufacturer" means any person who produces a lead

additive or sells a lead additive under his own name.

3. A new § 80.20 is added as follows:

§ 80.20 Controls applicable to gasoline refiners.

(a) (1) In the manufacture of gasoline at any refinery, no gasoline refiner shall exceed the average lead content per gallon specified below for each 3-month period (January through March, April through June, July through September, October through December):

(i) 1.7 grams of lead per gallon, after January 1, 1975;

(ii) 1.4 grams of lead per gallon, after January 1, 1976;

(iii) 1.0 grams of lead per gallon, after January 1, 1977;

(iv) 0.8 grams of lead per gallon, after January 1, 1978;

(v) 0.5 grams of lead per gallon, after January 1, 1979.

(2) For each 3-month period (January through March, April through June, July through September, October through December) the average lead content per gallon shall be computed by dividing total grams of lead used at a refinery in the manufacture of gasoline by total gallons of gasoline manufactured at such refinery.

(3) For each 3-month period (January through March, April through June, July through September, October through December) commencing with the period January 1, 1975 through March 31, 1975, each refiner shall submit to the Administrator a report showing for each refinery

(i) the total grams of lead in lead additive inventory on the first day of the period, (ii) the total grams of lead received during the period, (iii) the total grams of lead in lead additive inventory on the last day of the period, (iv) the total gallons of gasoline produced by such refinery during the period, and (v) the average lead content in each gallon

of gasoline produced during the period. Reports shall be submitted within 15 days after the close of the reporting period, on forms supplied by the Administrator upon request.

(b) The provisions of paragraph (a) (1) (i) and (ii) of this section shall not be applicable to any refiner which does not have more than 30,000 barrels per day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such refiner under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a through-put or other form of processing agreement, with the same effects as though such facilities had been leased.

4. A new § 80.25 is added as follows:

§ 80.25 Controls applicable to lead additive manufacturers.

For each 3-month period (January through March, April through June, July through September, October through December) commencing with the period January 1, 1975 through March 31, 1975, each lead additive manufacturer shall submit to the Administrator a report showing the total grams of lead shipped to each refinery by such lead additive manufacturer during the period. Reports shall be submitted within 15 days after the close of the reporting period, on forms supplied by the Administrator upon request.

5. A new § 80.26 is added as follows:

§ 80.26 Confidentiality of information.

Information obtained by the Administrator or his representatives pursuant to this part shall be treated, in so far as its confidentiality is concerned, in accordance with the provisions of 40 CFR Part 2.

[FR Doc. 73-25766 Filed 12-5-73; 8:45 am]

[FRL 325-2]

#### FUELS AND FUEL ADDITIVES

##### Suspension of Enforcement of Regulations for Control of Lead Additives in Gasoline

Regulations controlling the amount of lead additives in gasoline were published on December 6, 1973 (38 FR 33734). Beginning January 1, 1975 the regulations would have required gasoline manufacturers to gradually reduce the average lead content of gasoline manufactured at each refinery to 0.5 gram of lead per gallon over a four year period. The purpose of the regulations was to reduce lead emissions from automobiles to protect public health.

On December 20, 1974 these regulations were set aside by the U.S. Court of Appeals for the District of Columbia Circuit. Written opinions were issued on January 28, 1975. As a result of this decision by the Court, EPA has suspended enforcement of these regulations.

The Court's ruling regarding these regulations does not affect the unleaded gasoline regulations (38 FR 1254 and amendments) currently being enforced by EPA. The unleaded gasoline regulations are needed to protect the catalytic converters on most 1975 cars and require certain service stations to offer for sale a grade of unleaded gasoline.

Dated: February 12, 1975.

JOHN QUARLES,  
Acting Administrator.

[FR Doc. 75-4682 Filed 2-19-75; 8:45 am]



**FUELS AND FUEL ADDITIVES**

**Lifting of Suspension of Enforcement of Regulations for Control of Lead Additives in Gasoline**

On December 6, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 3373) final regulations controlling the amount of lead additives in gasoline. On December 20, 1974, the U.S. Court of Appeals for the District of Columbia set aside the regulations. For this reason, enforcement of the promulgated regulations was suspended by EPA. Notice of the suspension of enforcement was published in the FEDERAL REGISTER on February 20, 1975, (40 FR 7480).

On March 17, 1975, the Court granted the Agency's petition for rehearing of the case en banc and at the same time, vacated the prior judgment and opinions. The Court's decision to vacate the prior judgment served to reinstate the regulations. Nevertheless, because of the uncertainties raised by the litigation, EPA decided to continue to suspend enforcement of the regulations until after a final decision by the Court following rehearing. Rehearing was held May 30, 1975. On March 19, 1976, the Court issued its judgment upholding the regulations. EPA now lifts, in part, the suspension of enforcement of the regulations in the manner set forth below:

*Reporting Under 40 CFR 80.20(a)(3) and 80.25.* Under the promulgated regulations, refiners must submit quarterly reports on the use of lead additives in gasoline, and lead additive manufacturers must submit quarterly reports on the shipment of lead additives to refineries. The first quarterly reports will be due by July 15, 1976, for the April through June quarter. Subsequent reports shall be submitted in accordance with the promulgated reporting requirements. If a refiner or lead additive manufacturer has not fully implemented data collection procedures by April 1, reasonable estimates, clearly identified as such, of the information required to be reported may be submitted for the April-June quarter. Forms for making such reports are available by writing:

Director, Mobile Source Enforcement,  
Division (EN-340),  
U.S. Environmental Protection Agency,  
401 M Street, SW.,  
Washington, D.C. 20460.

*Enforcement of the Lead Reduction Schedule.* Due to continuing uncertainty pending appeal of the Court of Appeals' decision to the Supreme Court, the suspension of enforcement of the promulgated lead reduction schedule will continue until further notice.

Dated: March 24, 1976.

STANLEY W. LEGRO,  
Assistant Administrator  
for Enforcement.

[PR Doc.76-9425 Filed 3-31-76;8:45 am]

## NOTICES

uncertainties raised by the litigation. EPA decided to suspend enforcement of the regulations until after a final decision by the Court following rehearing. On March 19, 1976, the Court issued its judgment upholding the regulations.

Subsequently, a petition for certiorari was filed with the U.S. Supreme Court. Due to the uncertainty of this appeal, EPA continued the suspension of enforcement of the promulgated lead reduction schedule. Notice of the continued suspension was published on April 1, 1976. The quarterly lead usage reporting requirement which the regulations impose on refiners and lead additive manufacturers was brought into effect under this notice. Although no particular lead level was required, reports for the April-June quarter must be submitted by July 15, 1976.

On June 14, 1976, the U.S. Supreme Court denied the petition for certiorari.

### ENFORCEMENT OF LEAD REDUCTION SCHEDULE

Information available to the Agency indicates that the lead levels for all gasoline is in the range of 1.4 to 1.9 g/gal. Because of the extraordinary demand for gasoline (unleaded and leaded) currently being experienced, it appears that diversion of high octane blending components for unleaded gasoline will result in an increasing lead content in regular and premium grades. With the possibility that immediate resumption of enforcement of the lead schedule will cause gasoline shortages this summer, I am, by this notice, resuming enforcement of the 1.4 g/gal requirement on October 1, 1976. Refiners covered by this schedule will be required to meet the 1.4 gram per gallon average lead level for the October through December quarter. The Agency intends to enforce average lead levels for subsequent calendar quarters in accordance with the promulgated schedule, unless information provided in response to this notice demonstrates conclusively that compliance with that schedule would be technologically infeasible or would result in unreasonable economic impacts.

### REPORTING UNDER 40 CFR 80.20(a) (3) AND 80.25

The first quarterly reports under these regulations were required to be submitted by July 15, 1976, for the April through June quarter. Reports for the July through September quarter and subsequent calendar quarters must be submitted within 15 days from the last day of the quarter in accordance with the promulgated reporting requirements.

### ADDITIONAL INFORMATION

Because of the uncertainties caused by the legal challenge to the lead phase-down rule and the changes in the nation's crude and gasoline supply situation, it is not entirely clear that the impact of the time schedule contained in these regulations will be the same as anticipated when these rules were first promulgated. This may be especially true in the case of small refiners.

For this reason, I am hereby providing opportunity for the industry and all other interested persons to submit for Agency consideration prior to July 31, 1976, any information, data, or arguments concerning the enforcement of the phase-down schedule set forth in the Regulations. For the industry, this information must contain:

(1) A recent (1-3 years) history of lead levels, octane numbers, and relative volumes for each grade of motor gasoline manufactured at each refinery, including seasonal effects on the foregoing.

(2) A recent (1-3 years) history by refinery of purchases, sales, exchanges, and intra-company transfers at each refinery of gasoline components (report volumes on the same basis as (1) above).

(3) A recent history of the disposition of gasoline boiling range materials to products other than motor gasoline, e.g., aviation gasoline, aromatics. (Report volumes on the same basis as (1) above).

(4) For each reformer in each refinery, curves of historical and projected annual octane-volumes versus reformer severity (reformate octane number). The projected curve should reflect the use of the most effective catalyst that could be used in each reformer without major revisions. The volume units used here should be the same as used in (1) above. Also indicate severities planned for the period July 1, 1976, through December 31, 1977.

(5) Provide information about the effects of known future petrochemical operations, e.g., more aromatics sales, receipts of pyrolysis gasoline.

(6) Information regarding octane improving facilities under construction or about to start construction—start-up date, size, octane improving capability (on net basis if existing smaller units are to be retired), and other relevant information.

(7) Information about octane improving facilities planned, foreseen, or under study—start-up date, size, octane improving capability (on net basis if existing smaller units are to be retired). Indicate start-up date which would have been or will be needed to conform to EPA's lead phase-down schedule (40 CFR 80.20). If this date cannot be met, explain why.

(8) For each refinery, a forecast through 1980 of clear and as-shipped octanes and relative volumes for each grade of motor gasoline manufactured, including unleaded. During the period July 1, 1976, through December 31, 1977, to what extent, if any, would unleaded gasoline manufacture need to be curtailed to enable compliance with the lead phase-down schedule.

(9) Other relevant gasoline blending information, e.g., octane blending anomalies, known future crude oil quality changes and/or gas liquids availability.

The information listed above will be specifically required before the Agency will consider any submissions requesting relief from the promulgated phase-down schedule. Information obtained will be treated insofar as its confidentiality is

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 576-3]

### REGULATION OF FUEL AND FUEL ADDITIVES

#### Lifting of Suspension of Enforcement of Regulation Additives in Gasoline

On December 6, 1973, the Environmental Protection Agency published regulations requiring a reduction in the amount of lead additives in gasoline. Under the regulations, the initial reduction level was to become effective beginning January 1, 1975. On December 20, 1974, the U.S. Court of Appeals for the District of Columbia set aside the regulations. For this reason, enforcement of the promulgated regulations was suspended by EPA. Notice of the suspension was published on February 20, 1975.

On March 17, 1975, the Court granted the Agency's petition for rehearing of the case en banc, and at the same time, vacated the prior judgment and opinions. The Court's decision to vacate the prior judgment served to reinstate the regulations. Nevertheless, because of the



concerned, in accordance with provisions of 40 CFR Part 2. Submissions should be mailed to the Director, Mobile Source Enforcement Division (EN-340), E.P.A., 401 M Street, SW., Washington, D.C. 20460.

Dated: July 2, 1976.

STANLEY W. LEGRO,  
Assistant Administrator  
for Enforcement.

[FR Doc.76-19787 Filed 7-8-76;8:45 am]

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1974 set aside the regulations. EPA suspended enforcement on February 20, 1975 (40 FR 7480). On March 17, 1975, the Court granted the Agency's petition for rehearing *en banc* and vacated the prior judgment and opinions. On April 25, 1975, EPA continued the suspension of enforcement until the D.C. Circuit rendered its decision after rehearing (40 FR 18217). The D.C. Circuit issued its opinion upholding the regulations on March 19, 1976, but the industry litigants indicated their intention to seek Supreme Court review. On April 1, 1976 (41 FR 13984), EPA continued the suspension of enforcement but reinstated the reporting requirements. After the Supreme Court denied certiorari on June 14, 1976, EPA published a notice lifting its suspension of enforcement and stating that it would resume enforcement of the phase-down scheduled on October 1, 1976. (41 FR 28352, July 9, 1976.)

Due to the uncertainties caused by the course of this litigation and the changes in the nation's crude oil and gasoline supply situation, the July 9, 1976 notice provided opportunity for all interested persons to submit for Agency consideration prior to July 31, 1976, information, data and arguments concerning enforcement of the promulgated lead reduction schedule. The Agency announced its intention to enforce the promulgated schedule as of October 1, 1976, unless the information, data and arguments submitted demonstrated conclusively that compliance with the promulgated schedule would be technologically infeasible or would result in unreasonable economic impacts.

In order to remove lead additives from gasoline and retain the octane rating necessary to meet the octane requirements of motor vehicle engines, it is necessary for refiners to produce more high octane components as a lead substitute. The amount of high octane components which can currently be produced is insufficient to supply the demand created by the need for lead-free gasoline, gasoline complying with the phase-down schedule and feedstocks for the petrochemical industry.

Production of high octane components requires that a refiner install additional refining facilities. The lead time necessary to plan, procure and construct the new equipment is about 2 to 3 years from the completion of planning to on-line operation. It is more efficient for a refiner to install sufficient capacity to meet the lowest required lead level than to build smaller additions each year to meet a gradually phased schedule. In other words, given the need to add new processing facilities at a particular refinery, the addition needed to enable a reduction of lead content from 2.0 gpg to 1.0 gpg would require approximately the same lead time as that enabling a full reduction to 0.5 gpg.

#### STATUS OF COMPLIANCE

The promulgated schedule requires compliance as follows:

Lead content grams/gallon	Date
1.7.....	After Jan. 1, 1975.
1.4.....	After Jan. 1, 1976.
1.0.....	After Jan. 1, 1977.
0.8.....	After Jan. 1, 1978.
0.5.....	After Jan. 1, 1979.

The lead usage reports submitted for the April-June calendar quarter of 1976 pursuant to EPA's April 1, 1976, FEDERAL REGISTER notice showed an average lead concentration for the second quarter of 1.70 grams of lead per gallon for refiners with capacities above 30,000 barrels of crude input per day and 2.56 for those refiners below 30,000 barrels per day. The average lead concentration for all refiners reporting was 1.72 grams per gallon.

In response to the FEDERAL REGISTER notice of July 9, 1976, EPA received responses from 99 refiners representing approximately 200 refineries. The information provided in those responses and otherwise obtained by EPA indicates that the amount of construction for octane improvement currently underway or planned to be initiated in the immediate future will not allow production of sufficient high octane components for many refiners to both produce their anticipated levels of gasoline and meet the imminent interim dates of the lead phase-down schedule. The alternative for compliance with the interim dates available to refiners unable to produce sufficient high octane component substitutes for lead additives is to cut back on production of gasoline.

The consulting firm of Sobotka & Co., Inc., under contract to the EPA, analyzed the refiners' responses in conjunction with the quarterly reports required to be submitted by refiners and lead additive manufacturers under the existing regulation. The Federal Energy Administration (FEA) has also completed its preliminary assessment of the impact on motor gasoline supplies of the EPA lead phase-down schedule, using (1) industry projections of gasoline availability by the 22 largest refiners (with capacities of 175 thousand barrels per calendar day (MBPCD) or more) who represent about 83% of the United States gasoline market and 90% of the unleaded gasoline supply; (2) FEA data for the remainder of the industry (principally refiners with capacities below 175 MBPCD); and (3) a separate analysis by the consultant engineering firm Turner, Mason and Solomon under contract to FEA using FEA's refinery yield model. FEA combined the large refiners' projected gasoline availabilities and its estimates of small refiners' gasoline availabilities to arrive at total available supplies to compare with its demand projections. These projections and estimates were made for the peak demand months of June, July and August of 1977 and 1978 for supply and demand both with and without the scheduled lead phasedown. Turner, Mason and Solomon used an independent approach based on current technical capabilities of existing refineries and the lead times required to

[FRL 624-8]

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

### Control of Lead Additives in Gasoline

#### BACKGROUND

On December 6, 1973 (38 FR 33734), the Environmental Protection Agency published in the FEDERAL REGISTER regulations controlling the amount of lead additives used in gasoline. Under the regulations, the average lead content of a gallon of gasoline is to be reduced over a period of four years to 0.5 gram per gallon after January 1, 1979 in accordance with a prescribed reduction schedule. Enforcement of the regulations is based upon quarterly reports required to be submitted by refiners and lead additive manufacturers. Refiners are required to report lead usage and gasoline production at each refinery. Lead additive manufacturers must provide information regarding the quantity of lead additives shipped to each refinery.

The U.S. Court of Appeals for the D.C. Circuit by a 2-1 vote on December 20,



install the equipment necessary to meet the scheduled lead phase-down.

The EPA consultant and the FEA concluded that, given the industry's present inability to produce sufficient high octane gasoline, enforcement of the promulgated phase-down schedule could result in a gasoline shortage of approximately 6.6% of demand (about 500 MBPCD) in 1977 and 9.0% (about 700 MBPCD) of demand in 1978 (comparable to the 6.7 to 8.8% experienced during the height of the 1974 embargo). The FEA consultant's analysis generally supported these conclusions although the use of slightly different assumptions regarding projected demand and imports yielded slightly different specific estimates of the potential shortages. Analyses performed by Bonner and Moore Associates, Inc. and by the Pace Company under contract to industry reach this same general conclusion, although there is no universal agreement as to the precise extent of the gasoline shortfall which may occur.

In 1979, however, when the promulgated schedule would require compliance with the final level of 0.5 gram per gallon, EPA's consultant indicates that sufficient octane production equipment could be installed by industry to be in compliance with that final level, based on the lead time constraints associated with equipment installation. According to Sobotka & Co., Inc., the marketplace would be capable of providing the necessary equipment and contractors to meet the demand of planning, procurement, and construction of the necessary octane producing facilities in 1979. As indicated above, Sobotka has concluded that it will be possible for refineries to attain compliance with the 0.5 gpg level in 24 to 36 months. Further, the EPA consultant indicates that no appreciable shutdown time would be experienced during the modification of existing facilities or the installation of new octane producing equipment. Upon review the Agency has accepted these conclusions.

This discussion does not necessarily hold true for the small refineries (less than or equal to 30,000 BPCD of crude input) whose gasoline production comprises less than 2½ per cent of the U.S. total. Separate treatment of these small refineries with regard to the final lead level requirements is under active consideration. Possibilities being considered include making the final lead level requirement for such refineries 1.4 grams per gallon rather than 0.5 gram per gallon or permitting pooling (actual or on paper) by such small refineries with other refineries (large or small, for compensation to reach the 0.5 gram per gallon level. Any such change in the regulations affecting small refineries would be proposed in a separate action. EPA will announce a decision within 90 days of this publication regarding whether or not such a regulation change will be proposed.

#### AMENDMENTS TO ENFORCEMENT SCHEDULE

The time necessary to permit industry-wide achievement of the original schedule has been lost because of the litigation.

There have existed many months during which, because of Court decisions, pending Court action, and resulting suspensions of enforcement by EPA, the future of the regulations was in doubt. Given the lack of high octane component production capacity in the refinery industry due to this uncertainty, EPA is left with the problem of determining how to achieve the 0.5 gram/gallon level on the earliest practicable schedule without causing a gasoline shortage comparable to the one the country has recently weathered with much difficulty. This amendment is promulgated to achieve that goal.

The amendment eliminates the interim phase-down levels prior to January 1, 1978, but provides a mechanism to assure that refiners will make steady progress toward meeting the ultimate lead reduction required by the original regulation. The amendment leaves in effect the 0.8 gram per gallon standard to begin January 1, 1978, and establishes the 0.5 gram per gallon requirement for the quarter beginning October 1, 1979. Meeting the 0.8 gpg standard may require the same amount of construction lead time as will be required to meet the 0.5 gpg standard, but leaving the 0.8 gpg standard in place and suspending it only if a refiner shows he is making progress toward achieving compliance will provide EPA with the necessary leverage to assure such progress. Suspension of the 0.8 gram per gallon standard is conditioned on a showing by a refiner that he has prior to that time taken and is continuing to take sufficient actions in procuring and installing equipment or arranging process and exchange agreements, or both, to insure compliance with the 0.8 gram per gallon standard at the earliest practicable date, and 0.5 gram per gallon no later than October 1, 1979. A construction schedule showing the sequence and respective dates of all key events in the construction process must be submitted to the Administrator by January 31, 1977, for each refinery which will not be able to achieve compliance with the 0.8 gram per gallon standard by January 1, 1978, and for which suspension of the standard is desired. If compliance will be achieved wholly or partially by means of process or exchange agreements, a schedule indicating the timeframe for entering and implementing each such agreement with a general description of each must be provided to the Administrator by January 31, 1977. To make a satisfactory showing that the refiner is taking sufficient actions to warrant suspension of the 0.8 gram per gallon standard, the refiner must meet the dates on any schedule submitted. If any milestone date that is submitted is not met, the refiner must notify the Administrator within 10 days of the missed event. The regulations also require reporting to the Administrator by December 31, 1978, if a refiner elects to achieve compliance with the standard on October 1, 1979, by reducing gasoline production or significantly changing the product mix at a refinery. In addition to

these enumerated reporting requirements, the regulations authorize the Administrator to require from any refiner at any time after January 31, 1977, upon 30 days written notice, any documentation, information, or other evidence relevant to a determination of the good faith efforts of the refiner and its progress toward achieving compliance with the revised standards.

The extension of the final date to October 1, 1979, results from the up to 3 years lead time required to install necessary facilities. Since the demand for gasoline in the October-December and January-March quarters is less than in the summer quarters during which peak driving occurs, compliance may then be strictly enforced without the risk of creating gasoline shortages through unplanned-for curtailments of production. Noncompliance with the revised standards will be enforced with penalties assessed based on the degree and duration of lead levels in excess of the limit.

This amendment should eliminate any risk of gasoline shortages during 1977 and 1978 and beyond and their associated adverse economic impacts as a consequence of complying with this regulation. At the same time, the 1978 standard would allow for enforcement flexibility to assure steady progress toward meeting a 0.5 gpg standard no later than the quarter beginning October 1, 1979.

#### PUBLIC COMMENT

The Agency will consider public comments received within 30 days after the date of publication of these amendments. However, the Agency finds that good cause exists for omitting as impracticable and contrary to the public interest a notice of proposed rulemaking and opportunity for public comment prior to promulgation in addition to that received in response to the notice of July 9, 1976. The intent of these regulations is to achieve the desired reduction of lead in gasoline as expeditiously as practicable for protection of the public health without causing a gasoline shortage. The interim dates which are revoked by these amendments in large part served the purpose of enabling the Agency to insure that compliance with the lead limits in 1979 would be achieved. Because, as discussed above, these interim dates have been missed or rendered largely impracticable by the time lost to litigation, the Agency concludes that it is necessary to impose compliance schedule requirements to provide a similar mechanism for insuring compliance. Any period of delay for purposes of receiving prior comment will extend the period of industry uncertainty which has attended the litigious history of these regulations and has caused the delays in the original schedule. Any continuing uncertainty will likely result in further delays since the Administrator believes that the refining industry will not make the necessary commitments unless a firm compliance date is present now. Com-

ments, including three copies, should be submitted to the Director, Mobile Source Enforcement Division, Mail Code EN-340, 401 M Street, SW., Washington, D.C. 20460.

**EFFECTIVE DATE**

Due to the shortage of time before compliance with the October 1, 1976 date would be required, and for the reasons which are discussed in conjunction with the Agency finding that good cause exists for dispensing with a notice of proposed rulemaking and opportunity for public comment, the Agency finds that there is good cause to make these regulations effective upon publication.

Part 80, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows, effective on September 28, 1976.

Dated: September 24, 1976.

**RUSSELL E. TRAIN,**  
Administrator.

In Part 80, Chapter I, Title 40 of the Code of Federal Regulations, § 80.20 is amended by revoking paragraphs (a)(1)(i), (ii) and (iii); redesignating and revising paragraphs (a)(1)(iv) and (v) as (a)(1)(i) and (ii) and by adding a new paragraph (a)(4) to read as follows:

**§ 80.20 Controls applicable to gasoline refiners.**

- (a)(1) •••
- (i) 0.8 grams of lead per gallon, after January 1, 1978, except as provided in paragraph (a)(4) of this section.
- (ii) 0.5 grams of lead per gallon after October 1, 1979.

(4)(i) The requirements of paragraph (a)(1)(i) with respect to any refinery will be suspended conditioned upon a showing by the refiner that it has prior to January 1, 1978, made and is continuing to make reasonable good faith efforts to achieve compliance with the requirement of (a)(1)(i) at the earliest practicable date after January 1, 1978, and compliance with the requirement of (a)(1)(ii) on or before October 1, 1979.

(ii) To make the showing required by paragraph (a)(4)(i), the refiner is required to demonstrate that it has taken and is continuing to take sufficient actions at that refinery including procuring and installing equipment or entering into process and exchange agreements, or both, to achieve compliance with paragraph (a)(1). A refiner must submit not later than January 31, 1977, a schedule for achieving compliance with (a)(1) at each of its refineries which will not comply with the 0.8 gram per gallon standard by January 1, 1978. The Administrator will determine whether a refiner's actions constitute reasonable good faith efforts by monitoring the refiner's adherence to that schedule.

(iii) If the refiner intends to achieve compliance with paragraph (a)(1) wholly or partially by means of construction, the compliance schedule required to be submitted shall set forth the sequence and respective dates of all key events in the construction process including completion of plans and engineering drawings, ordering of equipment, receipt of equipment, signing of construction and other necessary contracts, commencement and completion of various phases of work, commencement and

completion of testing, and any other similar events or dates.

(iv) If the refiner intends to achieve compliance with paragraph (a)(1) wholly or partially through entering into and implementing process and exchange agreements, the compliance schedule required to be submitted shall describe the general content of such agreements and set forth the dates for entering into and implementing each such agreement.

(v) Where any refiner intends to achieve compliance with any provision of paragraph (a)(1) by any reduction in gasoline production, or by a significant change in product mix at that refinery, the refiner shall so notify the Administrator in writing by December 31, 1976. Such notification shall set forth by product the projected levels to be attained for each quarter during the period commencing January 1, 1978, and ending December 31, 1979, which would be attained under these regulations, and the corresponding levels which would be attained in the absence of these regulations.

(vi) The Administrator may require any refiner at any time after January 31, 1977, upon thirty days written notice, to submit such written reports, construction schedules, contracts, documents and other information and evidence as the Administrator deems relevant to a determination of compliance with this regulation.

(vii) A refiner shall notify the Administrator in writing within ten days after the failure of the refiner to meet any increment of progress on the compliance schedule submitted.

[FR Doc 76-28541 Filed 9-27-76; 8:46 am]



§ 1403.2-13.11 Lead content of gasoline restricted.

(a) No person shall cause or permit the use, or, if intended for use in the City of New York, the purchase, sale, offer for sale, storage or transportation of gasoline which contains more than the following amount of lead by weight for the respective octane ranges as follows:

	95.9 Octane No. & Above	Below 95.9 Octane No.
(1) On and after November 1, 1971...	2.0 grams per gal.	1.5 grams per gal.
(2) On and after January 1, 1972....	1.0 grams per gal.	1.0 grams per gal.
(3) On and after January 1, 1973....	0.5 grams per gal.	0.5 grams per gal.
(4) On and after January 1, 1974....	zero grams	zero grams

(b) Where the lead content of gasoline is restricted to zero grams per gallon as in sub-section a, gasoline which contains 0.075 grams of lead per gallon shall be deemed to meet such restriction.

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\* The term octane number shall mean research octane number or rating measured by the research method.

## STATUTES AND REGULATIONS

### 42 U.S.C. § 1857f-6c

Regulation of fuels-Authority of Administrator to regulate.

(a) The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

#### Registration requirement

(b) (1) For the purpose of registration of fuels and fuel additives, the Administrator shall require -

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive -

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control



performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with tests procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provisions of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

Control or prohibition of offending fuels and fuel additives

(c) (1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine.

(A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or  
(B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2) (A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 1857f-1 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require

the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3) (A) For the purpose of evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 1857h - 5(a) of this title (relating to subpoenas) shall be applicable.

(4) (A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine --

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition



applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 1857f-6a(a) of this title has at any time been waived under section 1857f-6a(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 1857c-5 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

#### Penalty

(d) Any person who violates subsection (a) of this section or the regulations prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (c) of this section shall forfeit and pay to the United States a civil penalty of \$10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications. July 14, 1955, c. 360, Title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub.L. 91-604, §§ 8(a), 9(a), 84 Stat. 1694, 1698.

42 U.S.C. § 1857d-1

Retention of State authority.

Except as otherwise provided in sections 1857c-10(c), (e), and (f), 1857f-6a, 1857-6c(c)(4), and 1857f-11 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 1857c-6 or section 1857c-7 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section. July 14, 1955, c.360, Title I, § 116, formerly § 109 as added Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Pub.L. 91-604, § 4(a), (c), 84 Stat. 1678, 1689; June 22, 1974, Pub.L. 93-319, § 6(b), 88 Stat. 259.



Mr. VAN DEERLIN. If these failures turn up in ordinary inspections as required, I want them to be corrected.

Mr. ROGERS of Florida. Not for emission standards. There is really no test, because we do not have the testing devices. Frankly, is that not basically the problem now in the country?

Mr. VAN DEERLIN. We have it in California, and we are doing something about it.

Mr. ROGERS of Florida. The gentleman knows that they are not doing anything as far as requiring testing on emission standards.

Mr. VAN DEERLIN. I will state to the gentleman from Florida that my son has spent time in court for violating the air with his car.

Mr. ROGERS of Florida. They did not have any testing devices. Many communities have ordinances which say if a person causes excess pollution, where they see a lot of smoke coming out, but what the gentleman is talking about is a lot different than emission standards as such, as I am sure the gentleman knows.

Mr. VAN DEERLIN. The gentleman from Florida knows that these devices are available.

Mr. ROGERS of Florida. I am not sure that they are yet available.

But in this case you are concentrating research and developing testing devices that can be used.

I think the House should also know before you vote on any amendment like this that we have directed the Secretary to develop testing devices which we do not have.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I certainly recognize the intentions of the gentleman from California (Mr. VAN DEERLIN), one of the very able members on our committee. I am very sure his intentions are only the finest and certainly insofar as his intention is concerned, certainly it is right. But I would like to point this out to the Members of the Congress right now.

The bill contains this language.

At such time as the Secretary, after consultation with the State, determines that the achievement of an air quality standard under section 107(e) requires inspection of motor vehicles in actual use and that such inspection is technologically and economically feasible, the State shall revise its plan to provide for such inspection.

This is a part of the bill. They can do that under the State plan.

Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California, Mr. VAN DEERLIN.

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. VAN DEERLIN. Mr. Chairman, I demand tellers so that we might see a little show down the middle aisle and a little of the feeling and the mood of the membership.

Tellers were refused.

So the amendment was rejected.

Mr. WAGGONNER. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time to try to make a little legislative history that might in time come to be important to all of us.

I do not think there is any argument among us about whether or not we ought as best we can to provide for cleaner air. Certainly, we all agree in this respect.

But I want to ask some questions of the committee chairman or the ranking minority member.

First as to section 206 on page 39 of the bill, which has to do with motor vehicle and motor vehicle engine compliance testing and certification.

Is it intended in the language of the committee bill that the Secretary of Health, Education, and Welfare will be required to test on the assembly line and certify every single engine produced for a period not to exceed 1 year before the manufacturer can sell that engine?

Mr. STAGGERS. I might say "No," categorically.

Mr. WAGGONNER. Then what is proposed?

Mr. STAGGERS. It means he can keep testing and when there is evidence that there is any failure or they do not come up to place, they can stop the assembly line right there and stay there.

Mr. WAGGONNER. It means he can, until he is so satisfied?

Mr. STAGGERS. That is right.

Mr. WAGGONNER. Is it necessary every time an engine design is changed by the manufacturer that he submit this new engine design to the Secretary of Health, Education, and Welfare for testing and certification?

Is the answer to that "No"?

Mr. STAGGERS. I would say this. I do not think he has to, if it is a trade secret, as to whatever he is doing—I do not think you would have to give this in advance. But they do have to meet certain standards. This is the criteria—they have to meet certain standards. I do not think they would have to show the design or anything, but after they started performance they have to meet certain performance standards.

Mr. WAGGONNER. How can this determination be made unless the Secretary of Health, Education, and Welfare engages in this testing which will precede certification?

Mr. STAGGERS. I would certainly say that he would have to. The only way he could do it would be on the first ones tested.

Mr. WAGGONNER. Then, in view of the gentleman's answer, if an automobile manufacturer or an engine manufacturer should change the design of the engines that he produces in mass production—and just for argument's sake we will say he produces 100,000 of these engines—then the Secretary of Health, Education, and Welfare could come in and revoke or suspend the certification of an engine for which the design has been changed because, in his opinion, the new engine does not meet the standards that he had set forth.

Mr. STAGGERS. According to the legislation, the manufacturer would have

to submit a prototype and it would have to be tested.

Mr. WAGGONNER. Then the answer to my first question should properly have been that when an engine design is changed, the manufacturer must submit a prototype for testing?

Mr. STAGGERS. That is correct. I did not understand your question and I did not answer it correctly.

Mr. WAGGONNER. Let us talk a little bit about fuel. Section 8 of the bill, which has to do with standards with respect to fuel, states that:

"(f) (1) The Secretary may, on the basis of specific findings made in accordance with subsection (g), establish standards respecting the composition or the chemical or physical properties of any fuel or fuel additive by specifying limitations on (or providing for elimination of) ingredients (including additives) or on the physical or chemical characteristics of any fuel or class of fuels (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Secretary finds has been developed to a point where in a reasonable time it will be in general use, on a significant number of motor vehicles or motor vehicle engines.

Am I to believe that under the authority of this section establishing standards with respect to fuels, the Secretary of Health, Education, and Welfare can, today, because no time is prescribed, if he so desires and feels he has sufficient information, say to the manufacturers and producers of fuels, "You have got to take lead out of gas. You have got to put another additive in. You have got to change your formula"?

Mr. STAGGERS. Under another section of the bill the Secretary is required to make specific findings that it affects either the health or the operation, and so forth, before he can put these measures into operation, and it must be based upon the facts and not allegations that he does not know about, and they have to be so stipulated.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. WAGGONNER was allowed to proceed for 5 additional minutes.)

Mr. WAGGONNER. I would like to ask the chairman this question. Let us consider the Department of Health, Education, and Welfare. Under existing legislation, the Secretary of Health, Education and Welfare made application of existing law which would allow him to remove from the market under conditions he could prescribe DDT. Now they are having second thoughts about DDT and they think they made a mistake. The scare has already been introduced in the minds of the public that lead is harmful to health, that it is a pollutant, and the administration apparently shares some concern because they apparently want to get lead out of gasoline. It might well be. I do not know. But they propose that a tax be placed on leaded gasoline, in effect, to try to take leaded gasoline off the market as well as produce revenue.

If the Secretary feels that he already has sufficient information, can he now

say, "You cannot manufacture gasoline and market it any longer that has lead in it?"

Mr. STAGGERS. No, he cannot. If the gentleman is talking about present law, as it is now constituted, he cannot.

Mr. WAGGONNER. I am talking about the law as it will be by these amendments.

Mr. STAGGERS. He will have that authority.

Mr. WAGGONNER. And he could do that tomorrow?

Mr. STAGGERS. If he has the facts, and he has proven this by facts, that they are a danger and poisonous—I am trying to find it in the bill so I can cite it to the gentleman.

Mr. WAGGONNER. We are getting into some dangerous ground, because we are talking about something we have not thought through.

Mr. STAGGERS. It says in this clause under section 8:

"(g) (1) Any standards pursuant to clause (A) of subsection (f) (1) shall be established by the Secretary on the basis of specific findings derived from relevant medical and scientific evidence, including (in the case of a standard with respect to a motor vehicle fuel or fuel additive) a finding that it is not otherwise technologically or economically feasible to achieve the emission standards established pursuant to section 202 of this Act.

Mr. WAGGONNER. Then the gentleman is saying to me, Mr. Chairman, that if information already exists or they believe they have that information which will prove that lead in itself in gasoline is harmful, whether they are right or not, but they believe they are right, if they have developed this information before this proposal is signed into law, it will be within the power of the Secretary of Health, Education, and Welfare at any point he desires to say that they must take lead out of gasoline.

Mr. STAGGERS. It is not based on belief. This says specifically that it is based upon specific findings.

Mr. WAGGONNER. When must those findings have been made?

Mr. STAGGERS. If this is possible, and I do not think it is at the present time, then it would have to be constituted on specific findings derived from relevant medical and scientific evidence.

Mr. WAGGONNER. The gentleman's answer is quite interesting. The gentleman just made the statement he did not think this was the case or possible at the present time. Is the gentleman saying to this House that nothing during the course of consideration of these amendments was produced in evidence to show that lead was harmful in gasoline?

Mr. STAGGERS. I did not say that.

Mr. WAGGONNER. That is the net effect, Mr. Chairman, of what the gentleman just said.

Mr. STAGGERS. No; I do not want the House to believe that.

Mr. WAGGONNER. Let us get this record straight because this legislative history is important, and none of us has had a chance to study this except those on the committee. This legislation was scheduled yesterday, and it came out of the blue, with many of us not having had an opportunity to prepare ourselves.

Mr. STAGGERS. The chairman of the

committee had nothing to do with that. The chairman of the committee was called yesterday and asked if he could appear before the Rules Committee, and I am complying with what I was requested to do.

I think there is nothing wrong with this. I think it is perfectly clear. There is no shenanigan. Some legislation was needed on the floor, and the chairman said he would agree to be helpful to the House and to carry on business.

Mr. WAGGONNER. I know there is no shenanigan. I do not imply that.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. Mr. Chairman, I think if the gentleman will look at this in context, he will see what we have done. As the gentleman knows, under the existing law, all of the burden of cleaning up emissions that were polluting the air from automobiles was placed on the automobile industry. That was where the burden was placed. The automobile industry said, "We cannot meet Government standards in 1975 if there is lead in gasoline." Now there was no authority for the Secretary to do anything about gasoline.

Mr. WAGGONNER. Let me ask a question. Does that mean that Government standards are bad, or that lead in gasoline is bad?

Mr. ROGERS of Florida. We are saying it is the joint burden of the oil industry and the automobile industry, because both products go to produce the pollution, so what this amendment does very simply is to say that the Secretary will also have the right to bring in the oil industry to help meet the problem, and he does this in a very precise way.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. WAGGONNER was allowed to proceed for 5 additional minutes.)

Mr. ROGERS of Florida. Mr. Chairman, if the gentleman will yield further, it is outlined how the Secretary does it. If all the emissions standards could be met and we could clean up the air without going into regulating any one industry, that would be fine, but it happens that this is not so.

So we have established now the authority where, if there is evidence that it is necessary to take out or eliminate certain components or certain additives to gasoline—and lead is one—that will be considered, no question about it, and if that is necessary, this bill will give the Secretary that authority.

Mr. WAGGONNER. Is it intended that in changing the gasoline formulas, if the Secretary says that they must take something out, that the formulas, as is the case with engines, for new fuels must be submitted to the Secretary for approval?

Mr. ROGERS of Florida. Let me say, we did not give authority—which is what I believe the gentleman is concerned about—for the Secretary to go in and tell the companies how to make gasoline. We do not tell them how to make an automobile engine. We do not want to get into that and do not want the Federal Government to do it.

Mr. WAGGONNER. And there is a good reason. We do not know how to do it, either.

Mr. ROGERS of Florida. I understand. We are not going to permit that.

We have said that if there is a component part of the gasoline or if there is an additive, which the facts show will affect the public health, and medical and scientific facts show this, or will prevent the emission standards from being met, the Secretary may act as to that component part or that additive.

Mr. WAGGONNER. What appeals are made available to the manufacturer of an engine or the producer of a fuel, if they take issue with the findings of the Secretary of Health, Education, and Welfare?

Mr. ROGERS of Florida. They have the Administrative Procedure Act.

Mr. WAGGONNER. And only the Administrative Procedure Act?

Mr. ROGERS of Florida. And an appeal to the court, from the Administrative Procedure Act.

Mr. WAGGONNER. In some cases they would.

Mr. ROGERS of Florida. They would in this case.

Mr. WAGGONNER. Not in all cases do people have the right of appeal to the court under the Administrative Procedure Act. In some instances under the Administrative Procedure Act the decisions are final, when they render a decision.

Mr. ROGERS of Florida. I believe they would in this instance.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from Texas.

Mr. KAZEN. Let me see if I can understand this. If the Secretary of Health, Education, and Welfare decides that lead is injurious to public health and that they then order lead be taken out of gasoline, and lead happens to be a component upon which high-compression engines depend to run—

Mr. WAGGONNER. As it is.

Mr. KAZEN. As it is—and those engines are already on the road now, that means they will stop the manufacture of that gasoline, and those cars then must stop. Is that the idea?

Mr. WAGGONNER. I should like to have an answer from some member of the committee.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from Florida (Mr. Rogers) for an answer.

Mr. ROGERS of Florida. I thank the gentleman for yielding.

First of all, it will have to be established. As we know, the automobile industry is now reducing the compression in the engines. This is already being accomplished in the 1971 models.

Mr. KAZEN. I will take a 1970 high-compression engine. What will I do for gasoline?

Mr. ROGERS of Florida. Now, first of all, there is a nonleaded, high-test gasoline already being produced for high-compression engines, and already one company is producing it—Amoco.



Conf. Rep. 91-1783, December 17, 1970, 1970 U.S. Code

Cong. & Admin. News 5385-86.

#### SECTION 211. REGULATION OF FUELS

Existing law (sec. 210 of the Clean Air Act) provides for registration of fuels and fuel additives delivered for introduction into commerce. The House bill amended this section to authorize the Administrator to establish standards respecting the physical or chemical properties of any fuel or fuel additive by specifying limitations on (or providing for elimination of) ingredients (including additives) or on the physical or chemical characteristics of any fuel or class of fuels if either (1) emission products from the fuel or fuel additive endanger public health or welfare, or (2) the fuel or fuel additive will significantly impair performance of an emission control device or system in general use (or likely to be in general use) on a significant number of motor vehicles or motor vehicle engines. Such standards must be based on specific medical, scientific, economic, and technological findings specified in the House bill.

The Administrator's authority under the House bill was applicable to all types of fuels, whether used in stationary sources or in motor vehicles, except that it did not apply to aviation fuel or additives thereto.

The Senate amendment amended the fuel registration provisions to expand the Administration's authority in this area, and in addition authorized him to control or prohibit the introduction into commerce of any fuel for use in vehicle engines if the combustion or evaporation of such fuel produces emissions which endanger the public health or welfare, or if such emissions prevent operation of effective systems for the control of emissions from any vehicle or vehicle engine which the Administrator finds would otherwise conform to applicable emission standards. The Administrator was required to hold public hearings and make certain findings before establishing a control or prohibition under this provision. Regulation of motor vehicle fuels by States and political subdivisions for purposes of emission control was preempted by the Senate amendment.

Under the conference substitute the Administrator may control or prohibit manufacture or sale of any motor vehicle fuel or fuel additive if any emissions therefrom will endanger the public health or welfare, or if emission products of such fuel or additive will impair to a significant degree the performance of any emission control device or system which is or will be in general use. Existing provisions of law relating to registration of fuels and fuel additives are retained with some revisions.

Before controlling or prohibiting manufacture or sale, the Administrator is required to consider specific technical and cost factors. Automobile manufacturers are required to furnish to the Administrator any information developed concerning emissions from motor vehicles resulting from the use of any fuel or fuel additive or the effect of such use on the performance of any emission control device or system.

No State may prescribe or enforce controls or prohibitions respecting any fuel or additive unless they are identical to those prescribed by the Federal Government or unless a State implementation plan under sec. 110 includes provision for fuel or additive control and such plan is approved by the Administrator as being necessary for achievement of national air quality standards. These restrictions will not apply to California.

A civil penalty of \$10,000 per day is provided for violations of the provisions relating to fuels and additives.

BY MAIL

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK)

Carolyn Lombardi being duly sworn, says:  
that I am over the age of eighteen years and am not  
a party herein, and that on the 22nd day of November,  
1976, I caused to be served two true copies of the  
within

Brief of Appellants - No. 74-1806

upon the attorneys hereinafter named at the places herein-  
after stated and set opposite their respective names by  
depositing the same, properly enclosed in a post-paid,  
properly addressed wrapper, in an official depository  
under the exclusive care and custody of the United States  
Post Office Department at 20 Exchange Place, New York, N.Y.  
within the City and State of New York, directed to said  
attorneys at their respective addresses given below, which  
were designated by them for that purpose upon the pre-  
ceding papers in this action, to wit:

<u>Name</u>	<u>Address</u>	<u>Attorney for</u>
Evelyn J. Junge	Office of the Cor- poration Counsel 1656 Municipal Bldg. Defendants- New York, N.Y. 10007 Appellees	
Miles F. McDonald	Shea, Gould, Climenko & Casey 330 Madison Avenue New York, N.Y. 10017	Plaintiffs- Appellants Getty Oil, <u>et al.</u>

Carolyn Lombardi

Sworn to before me this  
23<sup>rd</sup> day of November, 1976.

Maureen V. O'Hare

MAUREEN V. O'HARE  
Notary Public, State of New York  
No. 24-4509619  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1977